IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,
Plaintiffs,
vs. CASE NO. 91-49738
CA 22

PHILIP MORRIS COMPANIES,
INC., et al.,
Defendants.
_____/

TRIAL
VOLUME 115

TRANSCRIPT OF PROCEEDINGS in the above-styled cause before the Honorable Robert Paul Kaye, at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, on Monday, September 22, 1997, at 1:25 p.m.

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On behalf of the Plaintiffs
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(The following proceedings were had outside the presence of the jury:)

THE COURT: All right. Are you ready for the jury?

MR. COFER: Yes, Your Honor.

THE COURT: All right. Bring them in. We're ready.

(The jury entered the courtroom.)

THE COURT: All right. Folks, have a seat.

Ready to proceed?

MR. COFER: Yes, Your Honor. For our second witness, the defense calls Dianne Laxinetta.

Mrs. Laxinetta, take the witness stand up here.

Thereupon:

DIANNE IRENE LAXINETTA

Having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFER:

Q. Would you please state your full name and address for the record, please?

A. Yes. My name is Dianne Irene Laxinetta. That's L-a-x-i-n-e-t-t-a. And I live at

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[DELETED].
Q. Mrs. Laxinetta, what do you do for a living?
A. I'm the owner and president of Customer Service Consulting.
Q. And what is that?
A. It's a management consulting firm where we work with large customer contact groups to improve their customer service, be it with people or environmentally.
Q. Could you, A, speak up and, B, tell the jury -- give them an idea of some of the projects that your company consults on?
A. Is this loud enough?
THE COURT: There's microphone right there, so get as close to it as you can.
MR. COFER: There's also water on the Judge's bench, if you'd like some.
THE WITNESS: Thank you very much.
A. I was hired by the City of Los Angeles to work at their four major airports to improve several of the customer contact groups at the four major airports.
BY MR. COFER:
Q. And how long did that take?
A. About two and a half years.

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Q. Mrs. Laxinetta, are you being compensated for the time that you spent consulting with me and preparing to testify in this case?
A. Yes, I am.
Q. Tell the jury what your standard hourly rate is?
A. I receive $100 an hour.
Q. Mrs. Laxinetta, is your compensation in any way dependent on the outcome of that case?
A. No, it isn't.
Q. In other words, win, lose or draw you get paid; correct?
A. That's correct.
Q. Tell them approximately how many hours you've worked to date?
A. About 125 to 130.
Q. Could you tell the jury about your background in the airline industry after you graduated from the University of Southern California, please?
A. In March of 1970 I became a flight attendant with Pan American World Airways, and I was based at Miami and San Francisco, and I flew both primarily internationally, but domestic flights, as well.
Q. And then what did you do after you stopped

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being a flight attendant? What was your next job?
A. In December of 1972, I entered management for Pan American, and at this time, I started at the training academy. I was the supervisor of training and development there.
Q. How many flight attendants did you train, Mrs. Laxinetta?
A. That year we trained approximately 500 flight attendants.
Q. And, generally speaking, what's involved in training flight attendants?
A. Flight attendant initial training is basically a four-and-a-half-week course. The first week flight attendants are introduced to policies and procedures and different aircraft types. The next week is spent in emergency equipment training, so that they can learn to handle any emergency situation for the safety of themselves and the passengers.
And, finally, the last two weeks is primarily spent in all of the service skills that they need to have: People skills, how to handle irregular situations, how to cook in all of the kitchen situations in all of the various aircraft types, and how to serve all of the various meals on

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all of the different aircrafts that they'll be flying on during their career.

Q. That takes us to December 1973 when you became supervisor of flight service personnel and departure controls for Pan Am based in New York. Tell the jury what that position involved.

A. In this position on a daily basis I was responsible to make sure that the flight attendants that flew from the Kennedy station had all of their equipment and materials and information that they needed in order to take that trip.

Q. And how many flight attendants did you supervise on a daily basis?

A. On a daily basis, we would see anywhere between 300 and 500 flight attendants.

Q. The next thing I have, Mrs. Laxinetta, is May of 1974, when you became supervisor of flight service administration for Pan Am based in Los Angeles. Tell the jury, if you would, what that involved.

A. At this flight service base, we had approximately 650 flight attendants, and I was responsible for all of the regular and nonregular payroll activity for the flight attendant group.

Q. Your next position was supervisor, departure

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controls, crew scheduling for Los Angeles, Honolulu from May of '76 to July of 1978. First, where were you based for that position?

A. I was stationed at Los Angeles.

Q. And what did that job entail?

A. Both Los Angeles and the Honolulu flight service bases had individual scheduling units, and each month when the flight attendants would get what we call our bid lines, which basically is a monthly schedule that's sent out to them that they need to choose their monthly schedule from, I would make sure that the bid lines went out on a timely basis and that when the bid lines were awarded to the flight attendants, that they were done accurately.

And in the event that a flight attendant felt that he or she had a problem with that system, I would meet with that individual flight attendant, their union representative and a local member of management to try to resolve the issue.

Q. Now, you moved to San Francisco in 1978 and served as manager of administrative controls and services. Tell the jury about that position.

A. At this flight service bay we had 750 flight attendants, and I was responsible for the personnel budget for all of the flight attendants who flew out

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of the San Francisco station.

Q. The next promotion I have is Honolulu, September 1979, director, inflight service. What does a director of inflight service do?

A. The director of inflight services is primarily responsible for the overall service product of all the flight attendants that fly aircraft out of that station and the flight attendants flew to such locations as Asia, South Pacific and what we call gateway U.S. cities.

Q. Mrs. Laxinetta, that brings us to Miami in September of 1981 where you were director of inflight service for the Miami and Houston bases for Pan Am; is that correct, ma'am?

A. That is correct.

Q. What did that involve?

A. It is similar to the previous position that I had in Honolulu, however, at this assignment I had 1,800 flight attendants that I was responsible to train, counsel and discipline.

Q. Now, your next position was system director, inflight service, again based in Miami. Tell the jury about that position.

A. As system director of inflight service position, I was responsible for all of Pan Am's

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flight attendants, all 6,000 flight attendants for the overall service product on all of Pan American's aircraft, as well as the overall safety of the passengers and the crew.

Q. The next thing I have, Mrs. Laxinetta, is you were promoted to system director, passenger service administration and compliance for New York and Miami, from May 1984 until October of '85. Tell the jury about that job, if you would.

A. The senior vice president of passenger service and myself, we were responsible for developing, implementing and also monitoring all of the policies and procedures that the customer contact departments utilized in Pan American, such as reservations and sales, ground operations, inflight services, et cetera.

Q. And what was your final position with Pan American World Airways?

A. My final position was general manager of Los Angeles.

Q. And what did that involve on a day-to-day basis?

A. I was in charge of everything at the Los Angeles station, and the station was the fifth largest station in Pan Am's network of stations. I

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was responsible, basically, for most of everything that went on during the daily activity out of Los Angeles.

I was responsible for the ticket and office sales, which on an annual basis amounted to approximately $200 million dollars worth of tickets being sold annually. I also was responsible for passenger check-in, baggage claim, VIP lounges, securities, maintenance, cargo and sales.

Q. Did your duties ever take you down on the tarmac?

A. Yes, they did.

Q. If I've added correctly, Mrs. Laxinetta, you've had over 18 years of experience in the airline industry, and for 14 of those years you specifically focused on training, supervising, managing and directing flight attendants in a variety of cities; is that correct, ma'am?

A. That is correct.

Q. How would you compare in terms of perspective you gain, your 16 years in management to your two years as a flight attendant, in terms of the knowledge you gained about flight attendant activities and schedules?

A. I think when you're in management, you get a

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much more involved and broader view of all of the things that flight attendants have to do on a daily basis and the policies and procedures that they work with.

Q. Let's talk about flight attendant staffing and schedules. Are all planes staffed with the same number of flight attendants?

A. No, they're not.

Q. What is it that determines how many flight attendants work on a specific plane?

A. Well, there's several things. The first thing would be the aircraft type itself. You have a narrow-bodied aircraft which has one aisle, and they require fewer flight attendants. And you have what we call our wide-bodied aircrafts, which have two aisles, and they have more flight attendants that are required.

Q. And is that because they accommodate more passengers?

A. Yes. The other thing is they do accommodate more passengers on the wide-bodied aircraft, and also another difference that would make whether you had fewer or more flight attendants is the actual service that you're giving on board.

Q. Does the service depend to any extent on the

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length of the flight?
A. Yes, it does.
Q. Are there some routes that you know are just going to be heavier in terms of passenger traffic?
A. Yes. Statistically we have those type of demographics, yes.
Q. And do you take that into consideration, as well, in terms of how you staff a plane?
A. Yes, we do.
Q. Now, how do flight attendants determine their specific schedule for a given month?
A. Well, if we're looking at the month of October, early in the month of September, each flight attendant would receive a huge packet of information at their house. And in this package, which we call a bid line package, which is nothing more than a monthly schedule package, there would be hundreds of lines from which flight attendants could choose their next month's schedule.
A line is nothing more really basically than a series of trips that go from their home base back to their home base again.
Q. Now, you mention bid process. Do the flight attendants then bid for the trips they want?
A. Well, they do. When you leave the flight

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academy, you are given a seniority number, which lives with you for the rest of your life when you're with an airline.

Q. Well, let me ask you this. So the flight attendants get the bid package, they fill it out, put in their bids, and then who determines which flight attendant actually gets what flights? For example, what if more than a few flight attendants want the same flights?

A. Seniority. The highest in seniority gets his or her first choice, and so on down the list.

Q. Well, then, how much then, Mrs. Laxinetta, control do flight attendants have over the schedules that they fly?

A. In the beginning, they have less control, but about -- in my experience in about two years, in most airlines, flight attendants, if they do their bid process wisely, can have fairly good control over their lives.

Q. What effect, if any, Mrs. Laxinetta, did the introduction and popularity of wide-bodied planes have on a flight attendant's ability to choose his or her own schedule?

A. Well, I really believe it helps flight attendants at an earlier stage of their career to

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get more of what they're seeking because there are more positions on the aircraft for them to choose from.

Q. How has seniority changed over the years?

A. In the '60s and '70s, for a combination of reasons, flight attendants did not stay as flight attendants as long as they appeared to do in the '80's and '90s. So the longer you stay in your profession as a flight attendant, the more seniority you accrue, the better your chances are to choose whatever schedules you might want.

Q. In the earlier years, if the flight attendants didn't, on the average, have as long a career, also the seniority would accumulate faster?

A. I'm sorry?

Q. In other words, if flight attendants only worked five years on an average, if you had been there three years, you were fairly senior, or four years, in the earlier years?

A. Well, I guess it could be, but in present day, what happens is that you keep accruing seniority, but you also have your new flight attendants coming in underneath you, which raises your seniority.

Q. Let me ask you this. Does everyone tend to

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bid the same flights?

A. No, they don't. Flight attendants are a very diverse group, and there are a lot of different things that people that fly want to do with their life. For instance, some people who have children, small children at home, want to be home with their children, so they bid what we call turn-around trips or short trips away from home. For instance, they jump on a flight in the morning from Miami to New York, and they're back that afternoon to be with their families.

There are other flight attendants that want, maybe, to visit some other destinations because they have friends or family there, so they bid those trips accordingly.

There are some people who would like to go to school, some people who would like to earn lots of money, so they bid very long, high-houred trips. So there are all sorts of different types of bid line selections.

Q. Thank you, Mrs. Laxinetta.

On the average, how many hours a month does a flight attendant work?

A. I would say there are two times a year, so I would have to divide that accordingly.

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Q. Okay.
A. In the slow season, when we in management looked back at how flight attendants flew and what the true hours were, somewhere between 67 and 69 hours a month.
Q. Would the slow season generally be the winter months?
A. That is correct.
Q. How about in the summer months?
A. In the summer months it was somewhere between 70 and 73 hours per month.
Q. Let's just pick 70 hours a month, because that's a round number. It seems to be within the range. If a flight attendant works 70 hours a month, does that mean that he or she actually spends 70 hours a month in the air flying?
A. No, it does not.
Q. Then what does the 70 hours refer to?
A. 70 hours basically refers to the block-to-block time.
Q. And tell the jury, if you would, what is block-to-block time?
A. When an airplane closes the door, when you close the door in an airplane and it's pushed away from the passenger ramp, that's when the clock

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starts, and that's the beginning of block time. The clock continues to tick on all of the way until you reach your next destination and you pull back up to the passenger ramp, and that is then when block-to-block time ends.

Q. So does the block-to-block time include any time spent taxing or any delays on the runway?

A. Oh, yes, it does.

Q. Now, are there circumstances, Mrs. Laxinetta, where a flight attendant gets credit for hours that she doesn't actually work?

A. Yes. In most of the flight attendant contracts, there are provisos known as soft time, so that when a flight attendant, for instance in the Pan Am contract, when a flight attendant leaves his or her home base -- for every five hours that he or she is away until they come back to their home people, they earn one hour of flight time credit.

For instance, if a flight attendant would be called out to fly a Los Angeles-San Francisco trip, which is approximately an hour and ten minute block-to-block time, they fly to San Francisco, they overnight and they take the afternoon San Francisco-Los Angeles trip back down.

To complete this pattern, they would have

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flown approximately two hours and 20 minutes of block-to-block, but because they were away, let's say, 20 hours from their home base, they actually earned four hours of flight time credit. And per the contract, whatever is largest is what their awarded.

Q. Just so we're clear, 70 hours a month time worked does not equal time in the air?

A. That's correct.

Q. And it's block-to-block?

A. Yes.

Q. And then there may be circumstances where a flight attendant will get credit for the block-to-block time where he or she isn't even actually on the plane?

A. Yes.

Q. Now, let's talk specifically about what flight attendants do on the plane.

First, how is it determined where a flight attendant will work on the plane?

A. Some airlines during their monthly bid process actually have the flight attendant not only bid their monthly schedule but actually bid on a specific flight where they would like to work. Other airlines bid -- I mean, other airlines, when

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the flight attendants show up for briefing, they volunteer for a position or they're assigned to a position.

Q. Mrs. Laxinetta, when smoking was permitted on planes, could a flight attendant choose not to work in the smoking section?

A. No, she could not.

Q. Were flight attendants allowed to smoke on planes?

A. Yes, they are.

Q. When and where?

A. Flight attendants are allowed to smoke after the major meal services are over with, and they can smoke in a jump seat, which is in a smoking section on the aircraft, or in a galley location that is also in a smoking section.

Q. So when smoking was permitted on planes, was there any incentive for flight attendants who smoked to work the smoking sections?

A. Yes. I would say yes.

Q. Because?

A. Because they could have a cigarette and not be on a break. If you were assigned to a section where, let's say your jump seat was in a no-smoking section, even though the major meal service was

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over, you're still on duty and you would have to wait for the lead flight attendant to relieve you to take a break before you could go to a smoking area and have a cigarette.

So if you sat in a smoking section in a jump seat, you could have that even while you were on duty.

Q. And again, these questions all address when smoking was permitted on domestic flights.

A. Right.

Q. Was smoking permitted when the plane was at the gate?

A. No.

Q. When would the pilot turn off the no-smoking sign?

A. The general rule of thumb is that once the airplane takes off and reaches the 10,000 foot level, the no-smoking sign would go off.

Q. So it's not permitted at the gate. How about while the plane is taxing?

A. No.

Q. Are there times after the no-smoking sign is turned off and people are permitted to smoke, are there other times when the no-smoking sign is turned on when the plane is in flight?

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A. Yes. Whenever the aircraft would hit turbulence, if the pilot turns on the no-smoking sign, then the passengers would put out their cigarettes and the flight attendants are asked to take their jump seats.

Q. How about when the plane is preparing to land, at what point does the pilot turn on the no-smoking sign?

A. It's usually at the 10 or 15-minute point where you're once again going through the 10,000 foot level.

Q. So smoking is permitted on a plane when?

A. It's permitted when the no-smoking sign goes off, after you've taken off, and it is permitted all of the way to landing, just before final descent at the 10,000 foot level, but it is not permitted during the no-smoking sign in turbulence.

Q. Mrs. Laxinetta, when are flight attendants permitted to get up, move about the plane and start their duties?

A. It varies, but basically once again, the rule of thumb is when the aircraft is climbing and has hit a more level part of that climb, so that it is easier for them to remove the equipment.

Q. Have you brought with you a diagram of a

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Boeing 727?
A. Yes, I have.
Q. And does this fairly and accurately depict a 727?
A. I can't see it.
THE COURT: You can step down.
MR. COFER: Actually step down.
BY MR. COFER:
Q. Will this assist you in describing the activity patterns, what flight attendants do when they're on a plane?
A. Yes. Yes, it does.
Can everyone see okay?
Q. First, before you start, let me ask you this. Are all 727s set up exactly like this, or are there variations in terms of jump seats, galleys and what have you?
A. No. Not all 727s are set up like this. Each airline has their own configuration, and, in fact, even within a specific airline, we have different configurations on the same type of aircraft.
Q. If you would, please tell the jury what they're looking at.
A. Okay. This is the front of the aircraft,

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and this is the tail of the aircraft.
The key over here, basically the blue represents the flight attendant jump seats, and the jump seats are where the flight attendants sit for takeoff and landing or at any time when they're resting during the flight.
MR. COFER: Excuse me a moment.
Your Honor, would you like me to move this so you can see it?
THE COURT: No. Just turn it a little bit towards me just once so I can see what you're looking at, and then you can turn it back.
Okay.
MR. COFER: I'm sorry.
A. That's okay.
So as I was saying, the blue represents the jump seats you have two in front of the aircraft and two in the aft of the aircraft. You also --
Q. Go ahead.
A. The red represents the galley or the kitchen areas. This is your first-class kitchen area. This is your economy kitchen area.
The orange represents the lavatories. This would be your first-class lavatory, and you have two economy lavatories in the rear end of the aircraft.

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Q. Now, you told us that the number of flight attendants who work on a plane varies depending on the length of the flight and the size of the plane. Do the services provided by the flight attendants vary depending upon the length of the flight?
A. Yes, they do.
Q. Is there a minimum flight time for providing beverages?
A. The rule of thumb generally is 55 minutes of flight time for beverages and an hour and 30 for a snack service. And that's not a full meal service. That's just a snack service.
Q. Now, does that mean when you're on a plane that's less than 55 minutes you can't get a drink?
A. No. It doesn't mean that. You can have drinks on request.
Q. Now, when you were a flight attendant in the early '70s, Mrs. Laxinetta, were there dedicated smoking sections on the plane, or was smoking permitted anywhere?
A. No. When I was a flight attendant, smokers were randomly disbursed throughout the aircraft.
Q. When were smoking sections put in on planes?
A. 1973.
Q. You have two flight attendants, you say, in

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first class and two in economy?
A. Yes. Two in first class and two working in economy.
Q. The ones working in economy, do they work the entire length of the economy section, or are they assigned specific zones?
A. No. They would work the entire length of the economy section.
Q. Would you tell the jury on a flight, let's say a flight from Miami to New York, what the flight attendants would do on a 727?
A. Okay. The same would be true for first class. I'd like to concentrate on economy because of the numbers of passengers.
The flight attendants, after it was fairly level, would go to the back galley, kitchen area, and they would get out their carts and they would -- one would station his or her cart right here (indicating); another one would station their cart approximately midway through the cabin. And they would start moving towards the back of the aircraft serving beverages and soft drinks to the passengers.
Q. Okay. What would they do next?
A. After the beverage service was completed, they would stow their carts back into the kitchen.

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They would then pull out their other carts, and they would do the same thing, position them approximately in the same locations, and they would start handing out trays with the choice of entrees that the passengers wanted, and they would move back here.

At some point during the time when they are passing out trays to the economy passengers, one of the first-class flight attendants would break off and start the beverage service of the coffee, tea, soft drinks.

Q. Now, when smoking sections were put on 727s after 1973, where in the plane were they located?

A. In the back of the aircrafts in this section (indicating). For instance, economy would be in this area, and first class would be in the last rows.

Q. Now, this is a narrow-bodied plane. When did wide-bodied planes become popular?

A. In the 1970s.

Q. Have you also brought a diagram of a wide-bodied plane?

A. I did.

Q. It's a Boeing 747. And why did you choose a 747?

A. Because I think that it's a fair

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representation of a wide-bodied aircraft that's still in use, and it could illustrate well the services.

Q. And does this diagram fairly and accurately depict a 747?

A. It does.

Q. And do you believe it would assist the jury in your description of their services and activity levels?

A. Yes.

Q. Again, does this mean every 747 was set up exactly like this, or were there some variations?

A. No. As I said, with the 727, even within the airline itself, there were various different configurations. Numerous different.

Q. If you would, please, just describe generally for the jury the Boeing 747 cabin configuration.

A. Okay. Once again, this is the front of the aircraft, and this is the back of the aircraft.

On this aircraft, we have three different classes of service. We have A zone, which is first class, we have the B zone, which is business class, and we have C, D and E zone, which are all economy class services.

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Zone L represents the upper lobe dome that's above first class, which is also business.

The blue, once again, designates jump seats for the flight attendants. We have several more on this aircraft. You can see at each of the ten door locations, there are five on each side, you will see the blue designations.

The red, once again, represents the kitchen areas. This is your first-class kitchen, your business kitchen and your largest kitchen of all, which is in the back of the aircraft, middle of D and E, which is your economy kitchen.

And once again, the orange represents the lavatory area. This is your lavatory in the upper lounge. You have lavatories for business in first class located here, lavatories for economy here and also at the end of the aircraft.

Additionally, we have highlighted the smoking seats by having a heavier blue line. So your smoking seats on this aircraft, this row in first class, these two in business and these rows in the economy section.

Q. Now, let's assume again, Mrs. Laxinetta, that we have a flight, approximately a three-hour flight from Miami to New York, how many flight

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attendants would typically work the Boeing 747 on that flight?

A. 13 flight attendants.

Q. And would you tell the jury where each of the flight attendants would work?

A. Okay. You would have three flight attendants working first class. You would have three flight attendants for business, but one would be dedicated solely to the upper lounge and probably would not be coming down except for maybe a few tools and equipment.

So you would have two working this business area. You would have the remaining seven working economy. The six would work all of the passenger areas and one for your kitchen area.

Q. Now, I want to ask you about that. You told us on the 727 that a flight attendant who worked in economy worked the entire length of the economy class?

A. That's correct.

Q. Is it also true here, or are the flight attendants assigned to specific zones?

A. No. They're assigned what we call the dedicated areas. And in this particular case, two flight attendants would be assigned to zone C, two

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would be assigned to zone D and two to E.
Q. Now, is it correct that the only smoking that's permitted in the economy section of this plane is in the back of zone E?
A. That is correct.
Q. Is there any business reason for a flight attendant who's assigned to zone C to leave zone C and go back and work in the smoking section of zone E?
A. No. The closest they would get to it would be to go to this aft galley to pull out their carts.
Q. Is there any business reason that a flight attendant assigned to zone D would go back or have to go back to the smoking section in zone E?
A. No. The same is true.
Q. Who determined where the smoking sections were located?
A. The company did, the airlines.
Q. You may return to your seat, if you'd like, Mrs. Laxinetta. Thank you.
I have just a few more questions.
In your experience, Mrs. Laxinetta, both as a flight attendant and as a person with the various positions, management positions you held, is it common for a flight attendant to ever have to run or

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walk rapidly down an aisle to attend to the needs of passengers?

A. I've never seen it myself, and we actually train them during the emergency equipment training portion of their initial training not to run or to walk quickly because this tends to make the passengers become concerned and frightened because there might be an incident on board, an emergency.

Q. Who determined how many seats were devoted to the smoking sections on specific planes?

A. The airline.

Q. Now, Mrs. Laxinetta, you told the jury about your experience with Pan Am with respect to your testimony today in terms of bidding in terms of the activity patterns. Is that also true of the other airlines, the other major carriers in this country?

A. Yes, it is.

Q. And how do you know that?

A. Well, in the various positions that I held during the 14 years in inflight services, in most of them I was required as a part of my job to go out and to fly our competitors to make sure that our food and service product was as good, if not better, than theirs.

And most specifically, when I was the system

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director of inflight services, I was the one for the company that designated specific services to be placed on board, so I needed to be absolutely sure that when I said that we would have this service, that it was as good or better than our competitors, so I flew them to make sure that it was.

MR. COFER: Mrs. Laxinetta, thank you very much. That's all I have at this time.

THE COURT: Cross, please.

CROSS EXAMINATION

BY MR. ROSENBLATT:

Q. 25 years ago, for two years, you were a flight attendant?

A. That is correct.

Q. And after those two years, you were management?

A. Uh-huh. Yes.

Q. And the rest of your career in the airline industry, you were management?

A. Yes.

Q. Okay. And for a lot of those years, you were focused in on flight attendants and the problems of flight attendants and what they did, how they bid, those kind of things; correct?

A. Well, that was part of my job, but not all

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of my job.
Q. You obviously know a lot about flight attendants.
A. Yes, I do.
Q. And as I've heard your testimony today, it would seem to me that you basically would have been able to answer all of the questions you were asked by Mr. Cofer just based on your experience, without opening a book, without studying anything; isn't that correct?
A. Well, I was away from Pan Am American for a few years, so I did open a few books to refresh my memory.
Q. Well, what took 130 hours? In other words, the questions you were asked today, you were a flight attendant two years, then you were in management, constantly dealing with flight attendants. I'd like to have some understanding of what took you 130 hours to give the testimony that you gave today.
A. Okay. Well, several of those hours were spent in reviewing the Pan Am and the national contracts and the inflight service handbook and some of the other related documents that are on the list so that I would be sure that what I testified to

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today here was correct and accurate.
There also were meetings that I had with some of the attorneys and a project that I did for them, and that accounts for the 130 hours.
Q. As I sat here listening to your testimony, listening to the questions, listening to the answers, and correct me if I'm wrong, the bottom line of your testimony seems to be, being a flight attendant is not a very tough job?
MR. COFER: I'll object to that.
BY MR. ROSENBLATT:
Q. Not a very hard job; correct?
MR. COFER: I'll object to that, Your Honor. It's for the jury to determine what the testimony was.
THE COURT: But it's under cross examination. Overruled.
A. I don't think it's a very strenuous job, no.
BY MR. ROSENBLATT:
Q. Okay. Let's talk about a few things, a few responsibilities that a flight attendant has.
Now, some of the planes that the flight attendants work on can seat up to 450 people; right?
A. Such as the 747 that we used, yes.
Q. That's a mini-city, 450 people.

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A. Yes.
Q. And on that airplane with 450 people or 300 people or whatever, there's no police department, there's no fire department. If somebody gets drunk and unruly and there's a ruckus, that becomes the flight attendant's problem; right?
A. And then the pilot's problem, yes.
Q. Well, the pilot's main function is to fly the plane. Essentially that's the flight attendant's problem; isn't it?
A. If it gets out of control and the flight attendant is unable to contain it, then, no, then it goes to the pilot.
Q. All right. But part of the training that flight attendants have is obviously they should have the wherewithal and the experience and the judgment to be able to solve the problems so that they don't bother the guy who's flying the plane and is responsible for the lives of the 450 people?
A. I agree with you.
Q. Okay. Now, every flight that I've ever taken in the seat, in front of me, in the pocket there's a little bag.
A. A little?
Q. A little bag.

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A. Oh, okay.
Q. And we both know what that bag is for. If somebody gets air sick and they have to throw up, they throw up in the bag. And if they do, who do they give the bag to? Not the pilot?
A. The flight attendant.
Q. The flight attendant. Okay.
People come on a plane, whether it's at 7:00 a.m. in the morning or 7:00 p.m. at night, neither the airline, nor the pilot, nor the flight attendants have any idea what they've been doing for the six or eight hours before they got on the plane; correct?
A. Correct.
Q. For all you know, people can come on a plane, as long as they got a ticket, they could be on drugs, they could have taken a bunch of drinks, they could be half drunk or all of the way drunk; right?
A. Correct.
Q. And if that happens, and if people act bizarre and get into fights or get into arguments, that's the flight attendant's problem?
A. But that's also why we train them during the training programs, how to handle these particular

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situations to the very best of their abilities.
Q. If a smoker is sitting in a nonsmoking seat and decides that he wants to smoke, it's the flight attendant's job to tell him he can't smoke?
A. That's correct.
Q. And if he's nasty or belligerent or abusive, the flight attendant has got to deal with that?
A. That is correct.
Q. And sometimes people become nasty and abusive and insulting; is that correct?
A. That is correct. And we also, during training, try to help them handle those situations to keep it from escalating.
Q. And there's no age limit on the people that can come on a plane. Newborn infants can come on a plane; correct?
A. That's correct.
Q. And people 100 years old can come on a plane; correct?
A. Yes.
Q. And people with disabilities can come on a plane?
A. Yes.
Q. If a paraplegic in a wheelchair needs help or an elderly person or a child, the flight

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attendant has got to deal with that; right?
A. Well, if you have a passenger that's totally incapacitated, I believe they have to have someone traveling with them who can handle them in the event of an emergency situation. We do have handicapped people that come on board, but they must be able to get out, you know, by themselves.
Q. I believe you described yourself as a consultant.
A. Yes.
Q. Okay. And how long have you been a consultant?
A. Since 1989.
Q. That's when you left --
A. I left Pan American in 1988 and became married and enjoyed being married and then started my company, I think, early in 1989.
Q. What kind of cases do you consult on with the company that you're president of?
A. As I mentioned, I worked for two and a half years for the City of Los Angeles working an their airports to improve various customer departments that we, the passengers, believe the airlines are responsible for, but instead the City really provides those services, such as parking garages,

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cleanliness of the terminals, VIP lounges, things of that nature.

I've also worked for a media corporation, as well.

Q. What did you do for the media corporation?

A. They were expanding, and I went in to help them expand, in recruiting and training and completely updating their personnel policy manuals to reflect all of the laws of California for that particular time, for a company of its size.

Q. Have you ever been involved in a situation where you've given testimony for a private party about what flight attendants do or don't do?

A. No.

Q. Do you know how it was you were picked, out of all of the former flight attendants in America, how you were picked? Do you know how that decision came about?

A. Well, I think the decision came about because I was one of the few people that's out there right now who did run a large inflight services department and is not associated with an airline, and also because a former individual knew me, knew my name and called me.

Q. And that former individual is a lawyer named

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Barry Davidson, who represents Philip Morris, and he practices in Miami, and he was the first contact that you had about being a witness in this case; correct?

A. That's correct.

Q. And you've known him about 25 years, because he was a lawyer when you were testifying in a case years ago for Pan Am?

A. Probably about 15 years ago.

Q. And in that case about 15 years ago where you testified, you were testifying strictly as a fact witness, on fact?

A. I believe so, yes. I don't remember the terms. I believe so.

Q. You don't remember the circumstances?

A. I remember the circumstances of the trial, but I don't remember whether it was a fact -- I assume so, not being involved in this process too often.

Q. Now, when you were in management at Pan Am and there would be lawsuits or arbitrations filed by flight attendants, you would be involved in those disputes on the side of management; correct?

A. I would be involved if they had what were called system implications, such as maternity

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leaves, industrial issues, anything that might be a part of our contract that might change something in the contract, so I would become involved. And, yes, on behalf of the company.

Q. Never on behalf of the flight attendant?

A. No.

Q. Now, when you were a flight attendant -- and what years were those, '71, '72?

A. '72. December of '72, so almost three years.

Q. Now, in those days, they didn't have carts?

A. They had carts, but not meal carts. They had what we called were beverage carts. They also had carts that we placed food on that we would serve in first class or business class to passengers.

Q. So when you were a flight attendant, when it came to meal service, the set-up was that a flight attendant would physically take two trays, one in each hand, walk to the very front of the plane, hand out the two trays to a couple of passengers, go all of the way back to the opposite end of the plane, get two more trays, go back to the front, give them to two more passengers until that was accomplished, until everyone on the plane got their food?

A. Yes. They did that numerous times.

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Q. Okay. And sometimes people got impatient; they wanted food; right?
A. That's the nature of people.
Q. They want food?
A. I agree.
Q. Not everybody is polite and sweet?
A. No.
Q. And sometimes the flight attendants had to hustle; she doesn't want a hassle from somebody who's hungry?
A. Well, I don't know what you mean by "hustle."
Q. Move fast, not just take the two trays and go like this, but like this, zip, so the person in row two is not going to yell at her or act unpleasant. You've seen that happen?
A. No, I haven't.
Q. Everyone on your flights were just sweet and easy to get along with?
A. Well, we've had some bad situations on our flights, both when I was a flight attendant and when I would be a supervisor or director. I mean, people are not perfect. But hopefully we have recruited the kind of people that have the people skills that in most of the instances can handle it well for the

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passenger and for themselves.
Q. People skills meaning?
A. The ability to deal well with people, not only --
Q. Smile?
A. -- in good situations. No, in bad situations. To turn lemons into lemonade.
Q. That's part of the training of flight attendants, to turn lemons into lemonade?
A. Yes. To try to take an angry person, to make them happy and make them feel good about their experience and not to sit there and fume.
Q. And sometimes, in order to accomplish that, flight attendants have got to hustle, move quickly?
A. You keep going back to that. They may want to help them out by giving them a tray right then and there and then go back and help out some other passengers in the order. I mean, that's their judgment call. That's why we put them on board. We trust their judgment.
Q. And when you were a flight attendant, in addition to the meals, there would be a drink service?
A. Yes. That's correct.
Q. And there was no limit, then, when you were

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a flight attendant on the number of drinks a passenger could have; is that correct?

A. The rule of thumb was they could have as much as they wanted to until they appeared to be intoxicated, in which case we would stop serving them.

Q. So if somebody held their liquor well and they were quiet and they weren't acting obstreperous, they could have 15 drinks, theoretically?

A. I suppose that could happen, but I think if you had somebody you were serving 15 drinks to, I think a red flag in most flight attendants' eyes would appear, and they would start watering the drinks down is what they used to do.

Q. There was no limit on drinks then; there's no limit on drinks now?

A. To my knowledge, that's correct.

Q. When you were a flight attendant, you were a smoker?

A. Yes.

Q. And you smoked on airplanes?

A. Yes.

Q. You quit smoking about ten years ago because you wanted to have a healthier lifestyle; correct?

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A. Yes.
Q. Now, the airplanes that you were familiar with, the seating capacity was anywhere from about 375 to 450; correct?
A. On the 747s, yes. But I also flew narrow-bodied aircraft, too, in answer to your question.
Q. Now, back in the days when you were a flight attendant, you were allowed to smoke even if nonsmokers were in the galleys?
A. Well, could you be a little bit more specific for me? What aircraft are we talking about, because that would make a difference in the answer of my question.
Q. Well, any aircraft in which there were galleys and you felt like smoking, as I understood it, you had the right to smoke.
A. Yes. We did have the right to smoke.
Q. I mean, even if there was a flight attendant who was a nonsmoker and didn't particularly like your smoke?
A. Right.
Q. You still had the right to smoke?
A. Yes. But -- okay.
Q. Do you want to continue?

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A. No. It's okay. I was thinking of the 707 which I flew on, the front galley was not near a passenger area.

Q. There's no doubt in your mind when you worked as a flight attendant, on every flight, you inhaled, inhaled the smoke of passengers; correct?

A. The smoke of passengers, their cigarette smoke?

Q. Yes.

A. Oh, I'm sure I did.

Q. It was unavoidable; right?

A. Right.

Q. Now, when you were a flight attendant, I believe that was before the time they instituted sections, smoking and nonsmoking?

A. That's correct.

Q. So when you were a flight attendant, anybody who was a flight attendant, up until the time that rule went into effect, obviously the whole airplane was a smoking flight?

A. Yes.

Q. When you were a flight attendant, how many carry-ons were passengers allowed to take on the plane with them?

A. I really don't recall.

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Q. When you left Pan Am, what was the general rule in the industry on that, in terms of carry-ons?
A. Two bags.
Q. And the rule was that the bags had to be stored either in the overhead bin above the seat or under the seat; correct?
A. Correct.
Q. And obviously there would be situations where a passenger either unknowingly or knowingly would bring on a bag that was larger than was permissible, and if that happened, that was another situation that the flight attendants had to deal with?
A. That's correct.
Q. And if people came on with carry-ons and because of their physical condition or their age or whatever, they needed help, the flight attendants would help?
A. Yes.
Q. That was their job?
A. Yes.
Q. And it was also their job to make sure that the rule was complied with, that all the carry-ons were either in the overhead bin or under the seat?
A. That's correct.

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Q. It was your experience, was it not, that at least on some of the flights when you were a flight attendant, at least half the people were smoking?
A. I could not conjecture about that.
Q. Well, you did on your deposition; didn't you?
A. I don't believe so.
Q. You assumed it was true.
A. Could you please --
Q. Yes. I'll go right to the page. Page 94, Line 2 on Page 94.
MR. COFER: Well, let's start, counsel --
MR. ROSENBLATT: I'll start wherever you want me to start.
MR. COFER: Okay. Let's start on Page 93, Line 24, please.
MR. ROSENBLATT: Well, let me start at Line 18 on Page 93.
Q. "Question: But generally on those six-hour flights when smoking was allowed, there was a significant amount of smoking going on; correct?
"Answer: There was smoking going on, yes. Umm-humn. But what percentage was smokers, I don't know.

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"Question: It was somewhere around half the people smoking; wasn't it?
"Answer: I don't know.
"Question: Sometimes it was at least half the people smoking; wasn't it?
"Answer: I'm sure that is true.
"Question: A lot of smoke; correct"?
And your answer is: "A lot of smoke."
Is that correct?
A. Uh-huh.
Q. Okay. I understand you didn't count them, but from your two-and-a-half-years experience as a flight attendant where there was not a nonsmoking section, it seemed to you that up to half of the plane might have been smoking, and in any event, there was sure a lot of smoke around?
A. Well, as I said, there were times that it most likely could have been half, but not always. It could have been less, too.
Q. Sure. Now, you've even had the experience where sometimes flight attendants would go to the cockpit and ask the pilot if they could put the oxygen mask over their face. You've seen that happen?
A. Yes. I've done it myself.

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Q. You don't know anything about ventilation systems?
A. I do not.
Q. You don't know anything about secondhand smoke?
A. I do not.
Q. If you had been told when you were smoking on airplanes, this is a hypothetical question, if you had been told when you were a smoker and you smoked on airplanes that a Surgeon General of the United States had concluded that secondhand smoke could cause lung cancer and other diseases in healthy, nonsmokers, you wouldn't have smoked; would you?
MR. COFER: Hang on just a second. Objection, Your Honor. Beyond the scope. She testified about activity patterns.
THE COURT: Yes. I think that issue is beyond the scope.
MR. COFER: Thank you.
THE COURT: Sustained.
BY MR. ROSENBLATT:
Q. Let's talk about some of the flight attendant duties in general, some of the training they go through.

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Part of the job of a flight attendant is to conduct a pre-flight cabin emergency equipment check-in and make sure passengers are in their assigned seats?

A. Right. Those are two separate activities, though.

Q. Now, if it turns out that a passenger brings on a bag that's too large, does it sometimes happen that the bag has to be removed from the aircraft altogether?

A. Yes. Some airlines have people actually at the cabin door, the passenger service representatives, who will take the bag before they get on board. But that doesn't happen all of the time, and some airlines don't have the people there, and then it becomes the flight attendant's job to apologize to the passenger and to bring the bag forward and have it tagged and put below.

Q. The flight attendants are responsible for placing the doors in an arrival and departure mode, as appropriate?

A. That's correct.

Q. If there's a quarrel or dispute about seating on a airplane, that's the flight attendant's responsibility, to try to work that out in as nice

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and friendly a basis as possible?
A. Well, actually in most airlines, it's the passenger service agents. If they're still at the gate, an agent has to come, and they're called to resolve the situation. If it happens when they're way from the gate and the door is closed, then the flight attendant will get involved with that from time to time.
Q. If people want newspapers or magazines or pillows or blankets, there's that call button where they can -- they have the option of calling the flight attendant, and the flight attendant will do what he or she can to accommodate that request?
A. That's correct, but in most cases they've put the pillows and blankets out before the passengers even get on board the aircraft.
Q. Are wheelchairs allowed on airplanes?
A. They have a specific wheelchair that has been designed for the airplanes. The passenger wheelchair is put in the belly of the aircraft, and then they are placed in a much more narrow wheelchair that will go through the isles.
Q. Do people come on with canes, with walkers?
A. Yes, they do.
Q. Flight attendants are trained, that if

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someone has a heart attack or someone becomes seriously ill, to deal with that?

A. Yes. Uh-huh.

Q. Basically the flight attendant has got to be prepared to deal with every conceivable emergency, because you're faced with a situation where these 300 or 400 people are total strangers, you know nothing about them, you know nothing about their background and you've got to deal with a lot of possibilities?

A. Yes. That's true. Because from time to time, these situations do occur.

Q. Pregnant woman in their ninth month are allowed on planes?

A. They're not supposed to be.

Q. But who really checks?

A. They do slip by occasionally, yes.

Q. You would agree that many flight attendants in the history of air travel have been seriously injured, lost their lives and performed heroically?

A. Many flight attendants?

Q. Yes.

A. No, I would not agree with that. I think we have lost some very good flight attendants in accidents and incidents, but to characterize it as

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many flight attendants, I would not agree with that.
Q. Well, let's take out the word many, but obviously in plane crashes, you would agree that many times flight attendants have acted heroically and lost their lives?
A. Yes. And passengers, as well.
Q. How many employees do you have in Customer Service Consulting?
A. None. It's just my company.
Q. Just you?
A. Just me, myself and I.
Q. So the $13,000 you've made for your work in this case you don't have to share with anybody?
A. No. It's mine. In other projects, I've brought in independent contractors, if they're required for that specific contract.
Q. What have you understood your role to be in this case?
A. My role basically is to be able to explain what a flight attendant does on board an aircraft, to be able to explain how they select their monthly schedules, the different types of monthly schedules that they can choose from because of the different needs and desires amongst the group, and that's basically what I'm here to do.

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Q. If one of the issues that the jury is being called upon to determine in this case is whether secondhand smoke causes disease, you would agree you're of no assistance on that; are you?

MR. COFER: Your Honor, she's not a medical doctor, and we didn't offer her as a medical doctor.

THE COURT: She's not offered for that purpose.

MR. COFER: Pardon?

THE COURT: She's not being offered for that purpose.

MR. COFER: No. She's merely being offered for what she's testified to.

MR. ROSENBLATT: I'm merely asking for what purpose she's being offered.

MR. COFER: I think you asked her.

THE COURT: You asked the question. She answered the question. And I think we'll move on.

BY MR. ROSENBLATT:

Q. Okay. Basically to describe to this jury what flight attendants do?

A. Right.

Q. And on a flight, whether it's from Miami to

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New York or from Miami to Los Angeles, a flight attendant can't be guaranteed that he or she will have any rest period; it all depends on the circumstances of the flight?

A. That's true. But in a normal flight situation, 99.9 percent of the time, they will get a rest time.

Q. 99.9 percent of the time?

A. Well, for sure Miami-Los Angeles.

Q. Did you ever fly Miami-Los Angeles when you were a flight attendant?

A. Yes. When it was a feeder flight, yes, I did.

Q. And since you started Customer Service Consulting, this is the first and only time you've ever been asked to give testimony about flight attendants?

A. No. I was asked once before, when I was assistant director, inflight services, when I was working for Pan Am and in charge of the flight attendants. I mentioned that earlier, the case that I was involved in.

Q. The case about 15 years ago?

A. That's correct.

Q. That's when you were with Pan American?

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A. Pan Am.
Q. But I asked you since you began.
A. I'm sorry.
Q. I guess you began this in 1989.
A. I'm sorry. I misheard the question. I apologize.
Q. That's all right.
From 1989 to 1997, the only time you've been asked to give testimony in a case concerning your knowledge about flight attendants is this case?
A. Yes.
Q. And you were asked to do that by a lawyer representing Philip Morris who you knew from that earlier case 15 years ago?
A. Correct.
Q. During the 130 hours, thereabouts, that you've spent working on this case, did you read any of the various flight attendant depositions?
A. Yes, I did.
Q. Did you read all of them?
A. I think I did.
Q. Did you make notes of them?
A. Did I make notes on them?
Q. Yes, as you read them.
A. Yes. On the outside of them, yes.

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Q. But you don't know what kind of aircraft they flew on; you don't have any recollection of that?

A. Well, I do. Some flew DC-10s. Some flew 747s, 767s, 757s. I believe some even referred earlier to 727s, because they were a varied group in terms of seniority there. So some flew new generation, and some flew older generation.

Q. Then having given that answer, would you explain to me why you gave this answer on Page 66.

MR. COFER: Wait. Wait. Hang on a second.

MR. ROSENBLATT: Line 9.

THE WITNESS: Okay.

MR. COFER: Do you have a copy of the deposition for the witness?

MR. ROSENBLATT: No.

THE COURT: All right. What was the question that you asked?

BY MR. ROSENBLATT:

Q. The question asked of you on Page 66, Line 89: "What type of aircraft did the flight attendants in the Broin case work on?

"Answer: I don't know."

A. And that was correct at that time because I

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read the depositions after I gave my deposition.
Q. Aha. After you gave your deposition. And you gave your deposition after this trial had started, June 17th?
A. Yes. We tried to schedule it several times, but it fell apart.
MR. ROSENBLATT: That's all I have.
MR. COFER: I have just a couple, Mrs. Laxinetta.

REDIRECT EXAMINATION

BY MR. COFER:
Q. Tell the jury why some flight attendants would go into the cockpit and put the oxygen mask on?
A. In my experience, flight attendants would, on occasion, go into the cockpit to put the oxygen mask on because they were tired, and the oxygen, they felt, would innervate them.
MR. ROSENBLATT: Objection, Your Honor. This is obviously speculation.
MR. COFER: No. It's in the deposition, counsel.
THE COURT: I don't care if it's in the deposition or not, it might still be speculation. The point is of her own experience, not just what

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she anticipates or suspects.
MR. ROSENBLATT: How would she know?
BY MR. COFER:
Q. Well, based on your own experience --
THE COURT: Her experience, yes.
BY MR. COFER:
Q. Based on your experience flying for two and a half years as a flight attendant, supervising literally thousands of flight attendants on flights all over the world, tell the jury why flight attendants would go in the cockpit and breathe oxygen from the oxygen masks?
MR. ROSENBLATT: Objection. If she wants to testify about why she got oxygen, no objection.
THE COURT: Sustained.
BY MR. COFER:
Q. Why did you get oxygen?
A. At the time I was flying primarily international flights, and as we would go around the world or to far-flung places, with the time change differences, I would become tired, and so I went into the cockpit to take pure oxygen to make me feel less tired.
Q. Mrs. Laxinetta, Mr. Rosenblatt listed some

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of the other duties that flight attendants have on flights, in addition to the ones we discussed. For example, he mentioned pre-flight safety check; do you recall that?

A. Yes, I do.

Q. Was smoking permitted during pre-flight safety checks?

A. It is not.

Q. He also mentioned that a duty of the flight attendants was to make sure all of the passengers were in the seat with their seat belts on and chairs back; correct?

A. Correct.

Q. Was smoking permitted during that process?

A. No.

Q. He mentioned that there were times when the flight attendants had to assist with the bags, moving the bags; do you recall that?

A. Yes.

Q. Was smoking permitted during that time?

A. No.

Q. He mentioned that the flight attendant's responsibility was to put the doors in place before take-off. Was smoking permitted then?

A. No.

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Q. And then he mentioned that a flight attendant had to put the doors in place after the plane landed. Was smoking permitted then?
A. No.
MR. COFER: Mrs. Laxinetta, thank you very much. I appreciate it.
THE COURT: You may step down.
Who is the next witness, please?
MR. COFER: For our next witness, we call Dr. Jolanda Janczewski.
THE COURT: What's her last name?
MR. COFER: It's Janczewski, Y-a-n-c-z-e-w --
THE WITNESS: J-a.
MR. COFER: J-a-n. I knew that. J-a-n-c-z-e-w-s-k-i, pronounced "y." Dr. Janczewski.
I pronounced it right?
THE WITNESS: Yes.
MR. COFER: And Jolanda with a J also?
THE WITNESS: Yes.
MR. COFER: You know, I knew it was a J.
THE WITNESS: You're just seeing if I'm paying attention. I was just seeing if you were

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paying attention.
Thereupon:
JOLANDA JANCZEWSKI, Ph.D
Having been first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. COFER:
Q. Would you state your full name, and I won't ask you to spell it, and business address for the record, please.
A. It's Jolanda Janczewski. 4031 University Drive, Suite 400, in Fairfax, Virginia.
Q. Dr. Janczewski, what do you do for a living?
A. I'm the president and co-owner of Consolidated Safety Services, Incorporated.
Q. And what is Consolidated Safety Services?
A. CSS, as we call it, is a safety and occupational health consulting firm. We provide advice to companies about work place safety, work place health issues, public safety, public health, environmental problems, helping employers and helping owners of buildings cope with problems they might have with the occupants.
Q. Does the health consulting aspect of your business involve taking air samples, indoor air

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quality analyses?
A. Absolutely. It's a big part of our business.
Q. When was CSS formed?
A. In 1988.
Q. And how many professional staff employees are employed at your company?
A. We have about a dozen professionals and then associated support staff.
Q. Does your company do any work for the government?
A. Yes. We are primarily a Federal Government contractor.
Q. Give the jury an idea of some of the governmental agencies that your company works for?
A. Well, our largest client is the Department of Defense. We work for the Food and Drug Administration, the Centers for Disease Control, the National Institutes of Health, Occupational Safety and Health Administration, the National Institute of Occupational Safety and Health, the Federal Highway Administration.
Q. What kinds of work has CSS done for the Centers for Disease Control?
A. We did a research project with them several

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years ago where they were trying to test the proficiency of laboratories that were doing testing on people's blood for the AIDS virus to see whether or not they were doing it correctly, so they would send out samples to all these labs to have them tested, and then we would look at the results and edit the data and get it back to them.

Q. What kind of work did your company do for the Food and Drug Administration?

A. Again, this happened in the whole AIDS outbreak. The Food and Drug Administration, if there's a problem with a medical device, like a pacemaker that might fail, they'll take it out of the person and replace it, and then that has to go to the Food and Drug Administration to be examined to see what was wrong with it. So we developed standard operating procedures for them so that they can decontaminate these things that they were taking out of people before they were given to the engineers so there would be no risk that the engineers would pick up any blood-borne diseases.

Q. Dr. Janczewski, who were some of your company's private clients?

A. Well, let's see. We've worked for labor unions. The American Federation of Government

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Employees has been a client of ours.

Q. What have you done for them?

A. Several years ago we did a big indoor air quality survey study. We looked at people's attitudes and beliefs about indoor air quality, and this is the labor union that represents the Federal Government workers, as well as the workers of the D.C. government.

So we surveyed about 10,000 workers to find out about the indoor air quality in the government, Federal Government and D.C. government buildings. And we did that in conjunction with Johns Hopkins University who did the statistical analysis of all of the surveys.

Q. Have you ever done work for the American Association of Airport Executives?

A. Right. The American Association of Airport Executives, as well as the Air Transport Association.

For the AAAE, which are the Airport Executives, those are the people that run the airports, we were their on-call safety and health office for a couple of years where we had an 800 phone line where they could call in if they had a safety or health problem.

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We also put together a big safety manual for them that told the airports how they needed to operate, how they stayed in compliance with OSHA standards. For instance, on air sampling, you know, when they would have to take air samples when it was important to look at contamination that the workers might have, it ran everything from the workers who did the housekeeping and maintenance to the engineering staff, to the support, to office staff, everybody that is involved with airport operation.

Q. Dr. Janczewski, have you done work for R.J. Reynolds Tobacco Company and the Tobacco Institute?

A. Yes. The company has.

Q. Tell the jury what you've done for those two organizations.

A. That all started about when the indoor air quality issue became big. The tobacco industry, as you can see now, is very interested in what was causing indoor air quality problems and learning to understand ventilation systems and how to better design smoking lounges so that both smokers and nonsmokers could be accommodated.

In the beginning, the work that we did was more the interpretation of scientific data, looking at -- looking at studies, helping them to interpret

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them, you know, maybe doing some studies, actually taking measurements, because at that time nobody really knew what the levels were in the air. And then towards, you know, more recently, we've done some cooperative work with other industries that are interested in the smoking/nonsmoking issues, designing smoking lounges, that sort of thing.

Q. Thank you. I want to ask you some questions about your educational background.

You earned a bachelor of science in chemistry from Mary Washington College; correct?

A. That's correct.

Q. And then you received your master's in public health from the University of North Carolina, Chapel Hill; right?

A. Right.

Q. Tell the jury what kind of classes you were required to take in order to earn your master's in public health?

A. A lot of the classes I had to take for my master's I also took for my bachelor's degree, because science moves so fast, so even in a couple of years if you have a couple-year gap in there, you're taking stuff all over again because it's changed a lot.

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So I had to take microbiology and biochemistry, epidemiology, which is the study of diseases in a population, biostatistics. I specialized in biohazard sciences, so I took several semesters of biohazard sciences, and that's the study of infectious diseases on the job, you know, worrying about nurses and doctors getting hepatitis and AIDS on the job.

Public policy. Industrial hygiene. That's the study of learning to use the devices that we use to take air samples and then analyze them to figure out what's in the air, so you could take a whole two semesters on just learning to use that equipment and understanding what the data means.

Q. And you've also earned a doctorate in environmental biology and public policy; is that right?

A. Correct.

Q. I assume you had to take the same kinds of classes?

A. Yes. Here again, I was again taking some of these over again.

Q. Were you also required to write a dissertation in order to earn your doctorate degree?

A. Yes, I was.

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Q. If you would tell the jury what a dissertation is and what the subject of your dissertation was?

A. Well, in order to get a Ph.D or doctor of philosophy, it's a -- you have to do an original research project. So after you take a lot of course work, and you also stand in defense of your knowledge of the basic science, you have to be in a committee and stand before them and tell them -- and they'll ask you questions for days about what you know about basic sciences, and then they'll give you written exams for several days.

Then you start your own research project. It has to be an original piece of research that nobody has ever done before. Then from that, you write your dissertation, which usually ends up being a two or 300-page book on that research. Then you have to stand back in front of all of those people again and defend your dissertation of the research that you did.

Q. And yours was on what topic?

A. At that time, the AIDS virus was just coming into the population, and there were seven laboratories in the United States that were licensed to produce the AIDS virus. They have to produce

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thousands of gallons of AIDS that's very pure and very, very concentrated, because then that virus goes to all of the research laboratories so you can study the vaccines and make test kits.

There had been two accidents in those seven laboratories in which the lab workers were infected with the AIDS virus that they actually were working with, so my research project was partially sponsored by the National Institutes of Health because they did own one of the seven laboratories, and I looked at how the virus could possibly be moving around the lab, taking air samples, taking surface samples, tracking what the workers were doing in these laboratories, watching -- I was there when incidents happened to see how they cleaned them up and what they did and trying to figure out where could we put procedures in place so nobody would get exposed, because it was a very, very concentrated virus, so it was easy -- if you got exposed, it was very likely you were going to get an infection from it.

Q. Dr. Janczewski, as a result of your work and your dissertation, did you testify before the Occupational Health and Safety Administration?

A. Yes, I did. OSHA was -- OSHA, who makes all of the rules and regulations of how everybody will

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behave on their job so everybody is ensured they have a safe and healthful work place, they were going to put a blood-borne diseases standard together to help protect health care workers from hepatitis and AIDS and other blood-borne diseases, and part of the process for making these rules, they have to have public hearings, so they hired me as an expert to come in and testify on their behalf on what they had set up for the production laboratories, as well as regular laboratories.

And I had done a little bit of work with lifeguards and law enforcement, like homicide detectives, in helping to protect them, so I also testified on those issues, as well.

Q. Dr. Janczewski, is your company, Consolidated Safety Services, being compensated for the time that you and your employees have spent consulting with me and others and preparing your testimony today?

A. Yes.

Q. And what is your hourly rate?

A. $175 an hour.

Q. Is that the standard commercial rate you charge your clients?

A. That's our standard rate.

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Q. Is your compensation in any way dependent upon the outcome of this case?
A. No.
Q. Now, this case, Dr. Janczewski, is about flight attendants who claim that they got sick from breathing secondhand smoke as a result of breathing on airplanes. Have you ever done any measurement studies on planes?
A. Yes.
Q. Now, before we get to that, let me ask you this: Is there anything else about your work experience that allows you to assess flight attendant exposures on planes?
A. Well, I have -- that's been my whole career. I mean, my whole professional life has been spent assessing indoor environments, worker environments or public environments and doing air samples, doing water samples, doing safety analyses. So I'd have to say that 18 years of experience and education pretty well qualifies me to be able to look at that issue.
Q. Let's talk about your work history. Did you ever work for the National Institutes of Health?
A. Yes.
Q. Tell the jury briefly what is NIH and what

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you did there?

A. The National Institutes of Health is located in Bethesda, Maryland. They are the primary research arm of the Federal Government for health, research.

It's made up of several institutes. It isn't just one. A lot of them most people have heard of. The National Cancer Institute is part of it. Allergy, Infectious Diseases. The Institute for Musculoskeletal Disease. There's an institute for every major group of diseases. They all fall under NIH.

So those different institutes do research at their own buildings, but at the same time they give out grants to universities and colleges and private enterprises to do research on issues, as well.

So partly because it's a Federal Government facility, it's required to have a safety and health office. And I worked for the safety division, and that's the staff of safety professionals who keep an eye out on all of the research that NIH does, as well as the research that's done under an NIH grant to be sure that the workers are protected, that the public is protected, that the environment is protected, the patients are, and that the work, the

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research itself, is protected.
Q. Tell the jury the circumstances under which you went to get your master's in public health in North Carolina?
A. Oh, I had worked at the safety division for awhile, and then I left to go to a private consulting firm in the Washington area. Shortly after I left, I was contacted by the head of the safety division from NIH. The University of North Carolina had this program in biohazard sciences, and they were taking three students into the program, and NIH was -- and then the program allowed for a fellowship to pay for your books and your tuition, gave you money every month.
So NIH was allowed to select one of those students. It was their choice. So Dr. Barclay had called me and said they'd like to recommend me for the position and would I like it, and what a deal, everything was paid for, I couldn't turn it down.
Q. So NIH had one fellowship to offer, and you'd already left their employ at the time that they gave it to you?
A. Yes.
Q. You mentioned earlier that when you got your master's in public health, you emphasized biohazard

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sciences. Is the study of biohazard sciences concerned with airborne contaminants?

A. Absolutely. There are a lot of airborne infectious diseases. They aren't just like AIDS or hepatitis.

Q. Tell the jury generally what we mean by airborne contaminants?

A. Anything that's transmitted in the air. Tuberculosis is an airborne transmitted disease. It's not one that if I had it, you're over there, you're going to get it from me, but if you have close contact for long periods of time, it can be airborne transmitted.

Airborne diseases are the most dangerous diseases, of course, because, you know, things like ebola, when they were afraid that the ebola virus was airborne transmitted, that's what scared everyone because an infectious agent can move through a population so much faster if it's airborne.

So when you study biohazard science, you have to study a lot about taking air samples, how to identify what's in the air, how to quantify or count how much is in the air and then try to figure out whether that amount of whatever it is is going to

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affect somebody. And sometimes the equipment that you use isn't much different whether you're looking for a chemical or you're looking for a biological organism.

Q. When you were at the University of North Carolina, did you ever investigate airborne contaminants at an airport?

A. Yes.

Q. Tell the jury about that.

A. Part of going through the program in industrial hygiene, we went out on field trips. We were always out on field trips to look at different environments in the triangle Raleigh-Durham area of North Carolina.

And one of the trips that we took was to the Raleigh-Durham Airport to go look at the airport operations and see if we could, as students, figure out where the exposures were, where the airborne contaminants were, where the safety hazards were. So we went in as a group and then had to write a report about what we saw, take the samples, take a look at it.

Q. What sorts of contaminants did you find?

A. You know, in an airport, you have a lot -- a conglomeration of a lot of contamination sources.

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You have vehicles pulling up front, dropping people off. You have buses coming in. You have delivery trucks coming in. A lot of congested traffic that's idling. A lot of buses and vehicles that are idling, and then they're just giving off all their exhaust.

On the back end of the airport, you're refueling the aircraft. You've got vehicles running around back there. You have jet aircraft landing, taking off. So there's a lot of external contamination going on in the airport. And, of course, the airport itself has to get air from somewhere, so it's pulling it from the outside.

Then you have the typical indoor pollution that you have in any building. The carpet is off-gassing. People's dry cleaning on clothes are off-gassing. Everybody has contaminants.

People, all of us sitting right here are throwing off thousands of organisms, probably me more because I'm moving, but, you know, everybody is a contaminant themselves.

So, you know, an airport has its usual contamination, but then it's surrounded by outside contamination that's worse than you see in most other buildings.

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Q. Dr. Janczewski, after you received your master's, you worked for Dynamac Corporation. Tell the jury just briefly what you did at Dynamac Corporation.

A. Dynamac was a consulting firm in the Washington area.

Q. Now, again, focusing on examples of airborne contaminants, could you tell the jury about your work at those labs while you were at Dynamac?

A. Dynamac was a big consulting firm. One of the things they had was a private laboratory that did work for the government under government contract.

I worked as a safety specialist for Dynamac working on other contracts, but because we were in a division of safety experts, when something went wrong with the laboratory, they always called us up to run up there and figure out what was wrong. And I got called one morning because there were a bunch of mice that had dropped dead over at the lab.

Unfortunately, they were what we call control mice. When you do an experiment, you have mice, and then you expose them to something, something that's harmful or something that's going to help them. The only way you can tell the effect

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of that is to have a bunch of mice you haven't exposed. Those were your control mice.

They had this big experiment for a number of years. All of the sudden, the control mice are dead. So I run over there with another worker, and we start crawling through the ceiling. We figure whatever it is has to be airborne contamination because they've already figured out nobody fed them anything they're not supposed to, nobody has been in that room.

So we begin to crawl through the ceiling, and we crawl and we crawl and we follow the ventilation system until what we found was there was a fume hood down at the end of the hall in an old lab that hadn't been used for a long period of time, and the fume hood is like what you see on television, the cabinet that everybody puts their chemicals in where they put their arms in and they work with it.

Well, those fume hoods are supposed to take harmful chemicals up through the ceiling, usually through filters, and outside the building. Because the lab hadn't been used in a long time, somebody had disconnected the fume hood and removed a big piece of the duct work.

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So when I was up in the ceiling, the duct ran up from the fume hood into the dead space in the ceiling, and then there's about a four-foot gap, and then the rest of it picked up and went out through the filters.

So somebody had used the lab the night before and obviously had used something harmful to the mice. It went up into the dead space in the ceiling. It went down the hallway. It got sucked up by the ventilation system and right into the poor little mice.

Q. No more mice?

A. No more mice.

Q. The Smithsonian. Did you ever work for the Smithsonian?

A. Yes.

Q. Tell the jury about that.

A. The Smithsonian Institution is a research organization. Everybody thinks they are just a museum, but that's really a small part of what they do. They have a lot of research laboratories behind the museums that you see, and a lot of research going on all over the world and a lot of restoration. You know, they restore paintings and furniture that goes into the museums. They

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restore--in Silver Hill, Maryland is the restoration--aircraft restoration where they took the Wright Flyer and restored it, and they recently restored the Enola Gay. So they have a lot of operations going to.

They also have a federal facility, and so they are required also to have a safety health office, and I was part of that staff. There are about 32 professionals that oversee the safety of the people that work there as well as the public.

We also sit over the National Zoological Park and there's a wild animal breeding park in Virginia as well.

Q. You told us that in connection with your dissertation you testified before OSHA. I think you also told us that your companies then worked for both OSHA and NIOSH. Can you tell the jury what those organizations do?

A. Both are involved in occupational safety on the job, safety and health. If anybody is involved in a union, then you know exactly what I'm talking about about worker safety and health.

OSHA is the regulatory agency. They make the rules. They are the Occupational Safety Health Administration. They make the laws by which we all

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live. Our job and our business is to go in and ensure that somebody is operating in accordance with OSHA standards.

If you don't, OSHA is coming into the employer and levies a fine, sanctions fines, and they can even go as far as to have criminal prosecution of somebody who owns a business.

Now, NIOSH, on the other hand, is not a part of OSHA. They are a separate agency. They are part of the Centers for Disease Control and they are the National Institute of Occupational Safety and Health. They do the research. A lot of the research that they do eventually leads to OSHA standards, and there's a reason why the two are separate, so one group does not influence the other. The government has determined they should be separate from each other, but only one has legal authority to sanction fines.

Q. Dr. Janczewski, in this case we heard about permissible exposure levels or threshold limit values. Would you tell the jury what those are and what sets them?

A. The whole theory in exposure, when you're exposed to something, is that anything at a high enough dose or high enough level can be harmful.

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Some things that are normally harmful, at very, very low doses can be harmless.

So the whole object of the game, especially in our business, is to find out at what level will something cause you harm. But everything doesn't have that same level, so we depend on groups like NIOSH who don't make laws but they make recommendations of levels, and OSHA. There's another group called the ACGIH, American Council of Governmental Industrial Hygienists. They are industrial hygienists who first worked for government agents, but now everybody seems to belong to the group.

They all establish these limits or these levels that tell us at this level you can be exposed to this much of this chemical for eight hours a day, 40 hours a week and we don't expect to see any health consequences. The PELs that you'll hear or the TLVs, those are the permissible exposure levels or the threshold limit valves.

So it's our job in industrial hygiene to go in and take air samples, and we pull those levels and compare what we get in that air sample to what that recommended level is and we say, okay, we are well below that and we are okay or we are well above

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that and we need to make some changes.

Q. I'd like you to give the jury one more example of an airborne contaminant that you worked with or discovered while you were at the Smithsonian, and specifically the one with the monkey house at the National Zoo.

A. The monkey house. Never a dull moment at the Smithsonian. I got a call one morning. Over at the National Zoo we had a number of keepers in the monkey house and the great ape house who had come down with an organism called Giardiasis. Not a pleasant organism to get. It gives you terrible intestinal cramping, diarrhea, fever. It's a miserable organism to get exposed to. We don't normally see it in the Washington, D.C. area. It's seen in high altitudes such as Aspen in Colorado, but certainly not in Washington.

We called over to the veterinarians. The veterinarians came and told us the monkey house and the great ape house animals were infested with Giardiasis. We knew the keepers do not come into physical contact with the animals, so we couldn't figure out how it was transmitting.

We saw and watched the keepers, what they were doing, and we had an aerosol transmit problem.

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What I found out, every morning they shift the animals from an inside cage to an outside cage, and they proceed to go in there and clean the cages.

But the way they do that, they take a hot steam hose. If you live near a zoo, go watch this one morning. They hit all the animal droppings with this hot steam to try to disinfect the cage.

Of course, you had it in the animal droppings which is how the organism gets transmitted. It goes from the animal's intestinal tract, out the feces and on the ground. When you hit that with a steam hose, what you do is all the stuff goes into the air and the keepers were breathing in the air.

We figured out what was wrong. We were able to change a lot of their procedures, give them protective masks and clean up the whole thing and managed to irradicate it. We set it up in the Chicago Zoo, San Diego Zoo, and a lot of other zoos.

Q. Thank you, Dr. Janczewski. Just a few more questions on your background.

Your work for Program Resources, Inc. in 1987, and that was affiliated with Fort Dietrich. What is Fort Dietrich and what were your responsibilities there?

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A. Fort Dietrich is a military base in Frederick, Maryland. It was originally home of Biological Warfare Research. Of course, we don't do any biological warfare research anymore in this country, and so half the military base, because they had these very sophisticated laboratories, have been donated to the National Cancer Institute so that they can conduct research.

There's all sorts of research going on, AIDS research and some very infectious disease research going on, but now the National Cancer Institute runs it. PRI, who I worked for, Program Research, Incorporated, was the contractor hired to run that side of the military base for the National Cancer Institute.

So PRI supplied the scientists, the librarians, the maintenance personnel, the engineers, and the safety staff, and I was part of that safety staff.

Q. Thank you.

MR. COFER: Your Honor, I don't know what your preference is in terms of break. This is a convenient point if you want to take the afternoon break or I'm prepared to go on.

THE COURT: Unless the jury needs a

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break.

(A brief recess was taken.)

(The following proceedings were had outside the presence of the jury:)

THE COURT: Be seated, please.

MS. ROSENBLATT: Your Honor, before the jury comes back, I'm assuming counsel, pursuant to the motion we filed this morning, is not going to get into--and your ruling--anything post-ban. I just wanted to clear that so we wouldn't have to go side bar, and if we are going to argue it, I wish the witness be excused.

MR. COFER: Maybe we'll have Dr. Janczewski step out because we are moving right into that full force.

THE COURT: Okay. Step outside for a few minutes.

THE WITNESS: Shall I go away?

THE COURT: No. Don't go away, but just step outside the hall.

MR. COFER: Let me just finish.

MS. ROSENBLATT: It's my motion.

MR. COFER: But I never got to finish where I was this morning before we stopped after the comment on 893.

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MS. ROSENBLATT: I think you ruled, Your Honor, this morning.
MR. COFER: No, he didn't.
MS. ROSENBLATT: Any alternative causation would not be---
THE COURT: I'm not sure where he's going and what he's going to do.
MR. COFER: Let the Court rule.
How can plaintiff put in Exhibit 893, which talks about post-ban complaints, talks about smoking stopped, nothing else changed, talks about flight attendants and passengers who are complaining of health problems, nausea, headaches, et cetera, congressional hearings, how can they put this evidence in, which they have before the jury, how can Mrs. Broin tell the jury, pre- and post-bans, night and day, and we not be permitted to respond?
Mrs. Rosenblatt told Your Honor the reason they put this document in is to tell the jury that we are liars and that we have committed fraud by telling them that it wasn't smoking; it was something else.
Well, it's not smoking. Here's where the confusion is. Mrs. Rosenblatt says we are saying: Well, smoking may cause it. Something else does,

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too. That's Phase 2 to determine what caused a particular person's problem.

If that were our position, I would agree with that. But that's not our position. Our position is that secondhand smoke on planes does not cause disease, period. Other things cause disease.

This witness has performed measurement studies after the ban. She reviewed all the studies before the ban. She is on the aviation subcommittee that was formed because of the health problems, the respiratory problems and other health problems that have been going on since smoking was stopped.

She is personally involved, a Ph.D., and you've heard her extensive credentials, in trying to determine why the complaints, why the health problems have increased since the smoking has stopped.

And let me finally give you a great piece of evidence from plaintiffs' own case. Mrs. Rosenblatt looked at Dr. Steinfeld, the Surgeon General, and said, "Dr. Steinfeld, do you have to know the precise mechanism by which cigarette smoking causes cancer to know it causes cancer?"

Steinfeld looked at the jury and said, "No."

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Remember the old anecdote, Dr. Snow in London. There was a cholera epidemic. This was long before the bacteria theory of disease, long before the viral theory of disease.

But what Dr. Snow did that no one else did, he noticed people were drinking from the same well, so he took the pump handle off and the epidemic stopped.

Your Honor, 1990, they took the pump handle off the planes: They stopped smoking. And the cholera didn't stop. It didn't change.

They put in evidence through Mrs. Broin; they put in evidence through our documents; their experts have alluded to it. It's not a surprise. They have had expert witnesses, Judge, that they called that they have withdrawn. They had John Spangler who did a '94 measurement study who was the co-chair of the '86 Airliner Report, who testified extensively in his deposition about the post-ban complaints and trying to discover what the problem was. I can't say that's why they withdraw, but they didn't call him.

So this is not a surprise. Everyone knows that this is a problem. There are congressional hearings that have gone on after the ban in greater

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number than before the ban. There are more studies. The whole industry is working to try to figure out why, when smoking stopped, the problems continued. This person---

THE COURT: What problems continued?

MR. COFER: Respiratory problems.

THE COURT: Well, the---

MR. COFER: Let me tell you what plaintiffs are claiming in this case. They say flight attendants had lung cancer, heart disease and respiratory problems. They are saying there's excess disease. You know, vague respiratory problems, what have you. That's clearly in the case.

Now, here's where the whole thing gets a little confused because where we always end up when we get into this discussion, Mrs. Rosenblatt says: What does it have to do with lung cancer? What does it have to do with heart disease?

The fact is, Your Honor, there is no evidence, none, zilch, zip that flight attendants get more lung cancer or heart disease than non-flight attendants. There's none. There is none in the record.

They talk about their nationwide class for

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all these diseases, but there's none of that in the record. The only evidence there is on flight attendants' illnesses are these respiratory problems, and frankly, some breast cancer problems caused by radiation.

So the point is, the vast majority to the extent that they have a class, to the extent that they get far enough that they have people who come in and try to prove claims, the vast majority have to be those with the respiratory ailments that didn't stop, that have increased.

THE COURT: A lot of things can cause respiratory problems.

MR. COFER: I'm sorry?

THE COURT: Lots of things can cause respiratory problems other than smoke and including smoke.

MR. COFER: Our position is on planes, smoking doesn't. Now, you know, we need to make---

THE COURT: I don't know what kind of testimony she is going to make, but is she going to compare numbers?

MR. COFER: Here's what she's going to say. She's going to say that she was hired by the ASHRAE aviation subcommittee, the subcommittee that

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has been set up to study this, has NIOSH on it, has the flight attendants on it, has the FAA on it, has toxicologists on it. She was charged with that committee, her firm, to conduct a survey of all the airlines to see, comparing the problems before smoking was banned with after.

She's going to testify based on her survey, based on her measurements, based on her review of the literature, that the nature of the complaints, the health problems, is the same, the type of complaints is the same.

She's also going to testify, based on her work, that the numbers have increased, that the numbers of problems have increased since the ban.

She's going to talk about the specific work she has been hired to do looking at all the confounding factors trying to determine why, if smoking caused all this stuff, which everyone--that was the big assumption: If you stop smoking, you stop the problem. They stopped smoking; it didn't.

So now they have all of the experts and they're having congressional hearings and they are trying to figure out, then, what's going on.

So our position is secondhand smoke on planes, permitting the reasons you heard this

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morning, does not cause disease. There is not sufficient exposure.

You remember the old "the dose makes the poison." We are bringing in experts who are going to tie that up.

So then the question is, how do we rebut when Mr. Rosenblatt gets up in opening statement and says, "I have a nationwide class of thousands of flight attendants sick from breathing smoke on planes," when they put in exhibits saying, "These guys are lying to this day saying that the problem hasn't stopped," when Mrs. Broin takes the stand and says, "Night and day, pre- and post-ban," then our lips are sealed? We can't tell the jury the truth and the whole story?

THE COURT: That's not really an issue at the moment.

MR. COFER: It will be with this witness.

THE COURT: No. I want to hear what the plaintiffs say.

MR. ROSENBLATT: You know, it's just unbelievable, Judge. If we were all in the same courtroom today, you clearly ruled on this. They simply re-argue things.

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THE COURT: There are two ways to go on this thing. One is that you have to prove secondhand smoke causes disease. Doctors have come in, scientists have come in and opined on your side of the case that it does, scientifically speaking it does.

They are saying there are statistics out there that tend to disprove that concept on numbers alone. Not on the science, but on the numbers; that X number of people exposed didn't get it before, didn't get it afterwards, so forth and so on. There's a numbers game and that's what they are saying, as I understand it, that's her study.

The question basically is, more people got respiratory problems after the ban than before. That's lots of reasons for that. More flights, more people, more other situations, but it doesn't have anything to do with whether or not it causes a disease. And there's where the difference comes in.

Now, if you take that concept and say, all right, we are looking at causation and can it be determined whether smoking causes a disease, that's one issue.

If you get into Phase 2, if you get to that point, where you're saying now you have a disease,

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now what was it caused by, that's a different story. And it could be caused by lots of other things including smoke or expiring smoke.

So we don't know where to make that line of differentiation. If you're doing it on a general basis that your evidence tends to show that secondhand smoke does not cause disease--

MR. COFER: Exactly. That's exactly why.

THE COURT: --that's the only thing we haven't heard, and that's by the fact that she is comparing numbers?

MR. COFER: No, no. I'll tell you what that's by, and here's a time line that will describe it.

It's by there were measurement studies before smoking was banned measuring what was on planes. All of those were below those PELs and TLVs that we just described.

There were measurement studies on planes after smoking was banned, and the numbers, what was measured, are basically the same. No real difference. What we have in terms---

THE COURT: I don't follow that.

MR. COFER: Okay. Here's what happens.

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You go on airplanes and you take air samples and you measure things like volatile organic compounds; TSP, total suspended particles; you measure carbon dioxide; you measure carbon monoxide, and what those are indicators of, some of them are carcinogens, some of those are irritants, some of those are just indicators of air quality. They did measurement studies before smoking was banned and they have results.

THE COURT: But that doesn't prove the issue.

MR. COFER: What it proves is that nothing changed except smoking stopped. It's the pump handle example.

THE COURT: It doesn't prove the point.

MR. COFER: Your Honor, I think it does prove the point, and let me say one more thing, because there's one thing Mr. Rosenblatt said today I agree with. You have ruled on this. You ruled three times in our favor. The fourth time Mrs. Rosenblatt came in and then they had this argument, and they essentially said our position was different than what it is.

THE COURT: I think the point being, you could show that there are other things in an

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airline, in an airplane, that exist, and this is your point, that you have all these other contaminants in the air, not necessarily smoke, but you also have smoke.

Now, when the ban was introduced, these other elements were there and they may cause respiratory problems. So what? That doesn't prove that smoke didn't cause respiratory problems.

MR. COFER: Well, it certainly does.

THE COURT: No, it doesn't.

MR. COFER: It is exactly Dr. Steinfeld's example. He went through it---

THE COURT: No, it doesn't do that. That's something that's---

MR. COFER: That's for the jury to determine, Your Honor. It's clearly probative evidence.

THE COURT: Yes, but for her to come up and say it doesn't is a different story. I don't think she's qualified even to do that.

MR. COFER: Here's what she will say. She will say, "I did a survey. Here's what I did. Here's what I found. Here's my opinion. Has the nature of the complaints changed, the type of complaints? No. Has the quantity of the health

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complaints and problems changed? Yes, they've actually increased. Why? What gives? Well, let me tell you what we're doing. Here's what I've been charged by ASHRAE TC9.3."

Let me, because I throw numbers around and it doesn't have any meaning.

ASHRAE sets the ventilation standards. You heard Mr. Godly testify to them today. There is no ventilation standard for airplanes. They have recognized that planes are completely different than any other enclosed environment.

What has happened, they brought the experts from all over, every discipline. They have the flight attendant unions there, they have the FAA in, they have NIOSH there, and they have the manufacturers there, and they are all trying to figure out why are we still having health problems.

THE COURT: Let me get down to the basics. One of the issues was not whether ETS on airlines caused smoke--that was not one of the basic issues. The question was whether secondhand smoke causes disease including cancer and so forth and so on. What you're saying, it doesn't go to that issue. It only goes to a partial issue. And what you're trying to say is that if there are still

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people who have respiratory problems on airplanes after the ban, ergo, it wasn't the smoke. That's a quantum leep.

MR. COFER: What I'm saying is this: Hey, if you never had smoking on planes, you'd have the exact same situation.

THE COURT: I don't know about that either.

MR. COFER: Well, that's my position and I'm entitled to prove that.

THE COURT: I don't know if that's the science--

MR. COFER: But I get to put my case on.

THE COURT: --to make that determination from that.

MR. COFER: Here's what's really happening. Plaintiffs have chosen to bring in surgeon generals to say things like we're not real hip on cigarette companies or tobacco.

THE COURT: Let me just put it in perspective because I don't want to overlap with Phase 2, and that's where the problem comes in. You'll be perfectly entitled to do all that in Phase 2 and find out where it came from. I assume you're

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also going to have scientists who come in and talk the scientific difference between what they put on about causation.

MR. COFER: You bet. Let me tell you what we're doing today if it's not too obvious.

THE COURT: There are other contaminants in the air.

MR. COFER: Hopefully it's obvious, but I don't know how well I've done it. What we've tried to do is show planes are different, ventilations are different, exposures are different.

Now we bring on Mrs. Laxinetta who says flight attendant activity patterns, how long they were exposed, how many hours a month they were exposed, is really pretty minimal.

Now, you have the whole premise of plaintiffs' case.

THE COURT: What is she comparing it to?

MR. COFER: Now, Dr. Janczewski?

THE COURT: Yes.

MR. COFER: In terms of exposures?

THE COURT: Yes. Where is she getting the numbers from to say the '50s, '60s and '70s? Where is she getting those numbers?

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MR. COFER: What she will say is, "I've looked at all of the studies."

THE COURT: Studies from when?

MR. COFER: Well, the first one started in 1971. It's the Public Health Service. It was the surgeon general's agency that conducted it. so the first was '71.

"I reviewed all the studies from '71 through '97. I conducted one of them. I've sat down with flight attendants, with flight attendant unions, with airlines, and I have said, 'Tell me what the problems are on the planes.'"

THE COURT: I'm not concerned about that, and I do understand your position. Is she going to opine the ultimate opinion that secondhand smoke on airplanes does not cause disease or cancer? Is she going to say that or is she just going to give you the test results?

MR. COFER: Well, let me tell you what her opinion would be.

THE COURT: Because I don't know if she's in a position to make that statement.

MR. COFER: Well, I'll tell you what. I mean, here's the opinion she's going to give: That the type of complaint hasn't changed; that the

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number of complaints, that it has increased; was smoking the cause of the problem, no.

THE COURT: Okay. That testimony was elicited on plaintiffs' case.

MR. COFER: Yes.

THE COURT: Okay.

MS. ROSENBLATT: No, Your Honor. It really wasn't.

THE COURT: Yes, it was.

MS. ROSENBLATT: We had one flight attendant, her personal situation.

THE COURT: No. Other than that. It came out. It was brought out on plaintiffs' case. Within those parameters, I think it's all right to have her do those questions. I don't want to get into the conflict as to whether or not on an individual basis there's a causation factor.

MR. COFER: We will not touch individual basis, individual flight attendants, individual---

THE COURT: That's one factor toward causation that you say disproves the plaintiffs' case.

MR. COFER: Exactly. That's exactly right.

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THE COURT: All right.
MS. ROSENBLATT: Your Honor, we would have to bring--you know, based on your ruling, we didn't have--all the class representatives need to testify. We withdrew certain experts based on your ruling because it wasn't necessary to talk about post-ban. That was why several experts didn't testify. We restricted the testimony of experts because that was really a non-issue. There was no evidence that heart disease or any serious conditions, chronic conditions, cancers, were caused post-ban. And Your Honor also ruled that ongoing studies that they were trying to subpoena were out. Now suddenly all of this is coming in.
THE COURT: No. I think that's different from what we are talking about here.
MS. ROSENBLATT: It's really the same thing, Your Honor.
THE COURT: No, it's not.
MR. ROSENBLATT: Alternative causation.
MS. ROSENBLATT: It's alternative causation.
MR. COFER: No, it's---
MS. ROSENBLATT: You spoke for 15 minutes. I'd like to have three minutes.

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MR. COFER: I apologize.
MS. ROSENBLATT: You know, and this document is Smokers' Advocate, which was one of a hundred or more that came in to show the types of publications from the tobacco company. I mean, they are grasping at straws to make this evidence. This is highly objectionable. We have never seen this. This basically is evidence speaking. It's inaccurate. It talks about pre-ban complaints. This woman---
THE COURT: I'll tell you what. Even if they put it on, you will have rebuttal and you can bring these people in and you can testify to your heart's content.
MS. ROSENBLATT: Yes, but it will be very extensive rebuttal, Your Honor.
THE COURT: Well, it will be just as extensive the other way around.
MS. ROSENBLATT: We have not received any study from this witness. Now we are told she has conducted a study. I have never received a study about her complaints and what she found post-ban versus pre-ban. This is news to me, and this woman has worked for the tobacco industry. We have gotten a letter yesterday, over $800,000 she's

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received.
THE COURT: Now you're throwing something new to me now.
MS. ROSENBLATT: I just heard something now.
THE COURT: When did this come about, this chart?
MS. ROSENBLATT: Where is it?
MR. ROSENBLATT: All the charts.
THE COURT: Whoa. You took the deposition--
MS. ROSENBLATT: There was no study in her deposition.
THE COURT: --and was it ever mentioned that she made such a study, that she's prepared such a chart, that these are the things she is going to testify about?
MR. ROSENBLATT: No.
MS. ROSENBLATT: Definitely not, Your Honor.
MR. COFER: Wait, wait, wait.
MS. ROSENBLATT: I guess post-deposition again like the other witness.
MR. COFER: This is a demonstrative aid. She hadn't prepared this chart. She wasn't

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asked about this chart. We gave not one but two disclosures.

THE COURT: Was the plaintiff put on notice that this is what her testimony was going to be?

MR. COFER: Yes.

MS. ROSENBLATT: No, we were not.

MR. COFER: Absolutely. Look at the expert fact disclosures. Look at her deposition. The third opinion she gave in her deposition, when Mr. Hoag said--maybe it wasn't Mr. Hoag. In the deposition: "What are your opinions?"

"That the complaints have increased post-ban." I'll get the deposition.

MS. ROSENBLATT: She never said she conducted a study.

MR. COFER: Sure, she did.

MS. ROSENBLATT: And determined, based upon a scientific study, of complaints pre- and post-ban. That was not in her deposition. I re-read it last night.

MR. ROSENBLATT: She clearly says in her deposition she's not a scientist. Clearly says that.

MR. COFER: Cross-examine her.

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MS. ROSENBLATT: This is not for trial, Your Honor. This is a surprise.

MR. COFER: It is not surprise. You had your own witness who conducted the '94 study who was examined at great length on it and you chose not to call him.

MS. ROSENBLATT: Your Honor, as you see---

MR. COFER: It's true.

MS. ROSENBLATT: Excuse me, counsel. This is changing at midstream. Now this study becomes our witness' study. There is no study, Your Honor, that she has conducted.

THE COURT: Look, you brought out a lot of testimony to the effect that smoking--secondhand smoke causes disease. They're trying to show that secondhand smoke doesn't cause disease. If they want to show through this process and convince this jury that it doesn't cause disease, I think they are entitled to do that.

MS. ROSENBLATT: But not through this witness, Your Honor. She hasn't conducted a study.

THE COURT: Well, I don't know what her qualifications are to make that statement. All she can do is testify what her study showed, whether 14

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rats died or 15 rats died, or whatever it may be, that one color was green and the over was blue. That's a study and she can testify to that. But meaning thereof is another matter.

MS. ROSENBLATT: Can we voir dire her, then, to find out if she conducted a study and when she did, because it's not present in her deposition.

THE COURT: I think they're entitled to that.

MS. ROSENBLATT: I don't believe there is a study. If there was, it was not disclosed to us. We certainly haven't received a copy of that study.

THE COURT: Who prepared this chart here?

MR. COFER: We prepared this chart as a demonstrative aid.

THE COURT: Okay. Why don't you just put it away for the moment. Okay?

MR. COFER: I certainly won't show it to the jury until I lay the foundation in that part of the testimony.

THE COURT: Yes. Put it away for now. Let's bring her in and talk to her on voir dire and see what she's going to testify about.

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Not the jury.

MR. COFER: Just so one thing is clear, Your Honor. Her deposition was taken. At Page 12 she was asked her opinion: "What conclusions have you reached in this case?"

"And I guess the third thing would be"--

THE COURT: What did she say?

MR. COFER: --"that what we've seen in cabin air as far as complaints"--

THE COURT: Wait. One second, please. One second.

MR. COFER: --"what we have seen as far as complaints associated with cabin air have been consistent for the last several years, pre-smoking ban, post-smoking ban. The nature of the complaints haven't changed. The type of complaints haven't changed, and actually, in the recent past since the smoking bans, we have actually seen an increase in the number of complaints, which now leads us to believe it doesn't have anything to do with the contaminants in the air. It's got to be relative to something else."

THE COURT: Okay. Fine.

MR. COFER: Page 12.

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THE COURT: That's as far as she goes with it?
MR. COFER: No. I mean, she will go on.
MS. ROSENBLATT: That's as far as she goes, and when she was asked--
MR. COFER: You didn't ask the questions.
MS. ROSENBLATT: --what she did, she never said she did a study and we were not provided with a study.
THE COURT: Let's find out. Let's bring her in.
THE BAILIFF: Bring her in?
THE COURT: Yes. Now it's okay.
MR. COFER: And her study is Page 28 of the deposition.
MR. DAVIDSON: Line 17.
MR. COFER: Line what?
MR. DAVIDSON: 17.
(The witness entered the courtroom.)
MR. COFER: Line 17. So Page 28 is when she was asked about her study.
MR. ROSENBLATT: Well, why don't you just tip her off now. You know, it just doesn't

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stop.
THE COURT: All right.
MR. ROSENBLATT: It just doesn't stop.
THE COURT: Just a moment. It's going to stop now. Both sides. I don't want to hear this nonsense, I really don't. And you're going to stop standing up and yelling and accusing each other of doing things that you're not happy with. It doesn't work in the courtroom, not in my courtroom. Maybe in somebody else's, but not mine. Let's not do it.
The witness is here. We're going to enter into a voir dire situation. Questions will be asked. She'll give answers sufficient.
Have a seat.
Okay. You may question.
VOIR DIRE EXAMINATION
BY MR. ROSENBLATT:
Q. Have you conducted a study comparing post-ban complaints to pre-ban complaints?
A. I call it survey, yes.
Q. Have you conducted a study comparing post-ban complaints and pre-ban complaints?
A. Mr. Rosenblatt, I have a problem with the question because study means something different to me than it might mean to you. I have done a survey

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of post- and pre-ban complaints, yes.
Q. Is that the same as a study in your opinion?
A. No.
Q. So you never conducted a study comparing post-ban and pre-ban complaints, correct? You conducted a survey, but not a study?
A. Correct.
Q. Okay. When did you do that survey?
A. In 1994. Could have been early '95.
Q. Did it have a title?
A. I suppose it did. I don't recall it. I did it for a presentation.
Q. You did the survey strictly in connection with a speech, a talk you were giving?
A. Correct.
Q. To what group?
A. The American Society of Heating, Refrigerating and Air Conditioning Engineers. It was one of their public forums.
Q. This was something that you decided to do?
A. No. I was assigned to do it by an ASHRAE committee.
Q. Was that survey ever published anywhere?
A. In the minutes of that ASHRAE meeting, that winter meeting.

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Q. Well, was it ever published anywhere that the public would have access to it?
A. The meeting minutes are public.
Q. What did the survey consist of? I mean, what did you do?
A. You mean how did I get the information for it?
Q. Yes.
A. Mostly through phone calls and discussions. I called inflight service managers of airlines, engineers, management, public relations people, representatives from the Air Transport Association, to collect the information on, you know, what types of complaints, try to quantify them, try to qualify them, how long these complaints have been going on, the whole history. My assignment was to provide a talk on the history of complaints.
Q. A history of flight attendant complaints?
A. Correct. Pre-1994.
Q. And what were you comparing in that survey, if anything?
A. Well, we were trying to look at--we were trying to look at, you know, the past complaints as opposed to the more recent complaints because there were a number of factors that were being discussed,

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the different types of ventilation systems on aircraft, the smoking issues, the smoking bans. There were a lot of things that we were considering and everybody was curious as to about, well, how were the complaints laying out over the years: were we getting more, were we getting less, what was the nature of them.

Q. You did this completely on your own?

A. Yes.

Q. I mean, you didn't have assistance or anything?

A. A couple of my staff might have worked on a little of it, but I did most of it myself.

Q. Most of the phone calls?

A. Right.

Q. And were they all made in one day or a few days?

A. Oh, no. It took me--it was over a couple of months.

Q. Did you make notes in the---

A. Yes.

Q. Do you have them?

A. No.

Q. What happened to them? In other words, you would make a phone call?

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A. And take notes.
Q. You would talk to somebody about complaints. Presumably you made notes?
A. Right.
Q. Those notes don't exist anymore?
A. They might. I don't know. Sometimes when I prepare a speech, I'll put all the notes I have for a speech--I have a whole file of nothing but talks that I give. It might be in a daily log that I keep of all my phone calls. I don't know if I would still have those.

The final results--the information that I could find out, I put together handouts for that ASHRAE presentation. Those are available as part of the minutes.

Q. You did not speak directly with flight attendants, did you?
A. Let me think. No. Just the union representative for the flight attendants. I spoke a lot with him.
Q. Now, the minutes you refer to, those were not court reported, word-for-word minutes, are they?
A. I'm hesitating because they used to be more like that and now they are more brief. Back in '94 they were almost the word-for-word minutes.

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Q. Do you have a copy of that?
A. Not here.
Q. You didn't talk to Norma Broin or Alfred Lee's estate or Carol Coy's estate?
A. No.
Q. You didn't talk to any of the flight attendants in this case?
A. I talked to the representative of the flight attendants. Not you the representative. The flight attendants' union representative. And I listened to the flight attendants that came to talk to the ASHRAE committee.
Q. Were you aware of this lawsuit at that time?
A. No.
Q. Now, this survey that we were just talking about, you would agree it's not a scientific study?
A. No. There's no statistical analysis involved. It's a simple survey.
Q. It's not the kind of thing that could be published as is, as of the time you gave your presentation in any kind of peer-reviewed journal?
A. Well, in peer-reviewed, no. It can be published in a non-peer-reviewed.
MS. ROSENBLATT: We have a further motion after.

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MR. COFER: I have some questions, please.

VOIR DIRE EXAMINATION

BY MR. COFER:

Q. Dr. Janczewski, here's what I want to clarify. I want you to tell the Judge about your 1994 study. Tell him about your 1994 survey. Tell him what ASHRAE TC9.3 is. Tell him your role on it, everyone else who was on it, and the purpose of it, so that the Court can understand what you did, what's going on and why.

A. Oh, okay. In 1994--ASHRAE, the American Society of Heating, Refrigerating and Air Conditioning Engineers, which are the engineers that put together the codes and standards for ventilation systems and general building comfort, and set the standards for indoor environments, there has been a lot of debate on whether or not the ASHRAE standards were applicable to aircraft cabins.

ASHRAE has a technical committee assigned to every issue out there. They have a TC9.3 committee which is called the transportation committee. So what ASHRAE decided to do is create a subcommittee under TC9.3 and it was called the aviation subcommittee to look specifically at that issue of

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do the ASHRAE standards apply.

I was one of the original members on the TC9.3 subcommittee, and on it was the flight attendants' union, the National Institute of Occupational Safety and Health, all of the aircraft manufacturers: so Boeing, McDonnell Douglas, Airbus, all of the major airlines: United, Continental, TWA, as well as ATA, which is the major trade association representing the airlines. Flight attendants' union has a representative there, and then there are a number of flight attendants that are at all of the meetings. A lot of engineers, ventilation engineers, industrial hygiene professionals such as myself who are air quality testing specialists, component manufactures, the manufacturers of filtration and ventilation systems.

So everybody sitting around this table trying to decide what kinds of standards should we have, what level should we set in the aircraft, what should be for comfort, what should be for health, and so what we did in the very beginning was we wanted to put on a forum to educate the public on it.

So it was the very first forum, and the head of the committee assigned me to put something--a

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talk to brief everybody because they are public meetings and everybody gets in. All sorts of people attend and the room gets more and more crowded.

MR. COFER: Let me interrupt for a second.

Your Honor, may I approach and hand you her deposition where she was asked about this and described it in detail at Page 19 and 20?

THE COURT: It's not appropriate.

MR. COFER: All right. I'm sorry.

Go ahead.

THE WITNESS: Shall I go on?

THE COURT: I don't even know where you're headed with all of this. So the question is, what did you do and how did you do it?

THE WITNESS: I put together this survey that I just described.

Q. (By Mr. Cofer) Now, tell the Judge about the study you did in '94.

A. The '94 study?

Q. Right.

A. Right prior to ASHRAE 9.3 subcommittee being formed, we had conducted a study on behalf of the Air Transport Association. It's a trade association representing all the major U.S. carriers: United,

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TWA, Continental, Delta.

Q. What kind of study? Tell him what you did.

A. They asked us whether we could go on board, put together a study to go on board, sample the air, look for the contaminant levels, and then report back to them on corrective measures or whether or not they actually had a problem.

The whole issue of aircraft air quality was becoming so big at that time. There was more and more concern about it, and the airlines were very concerned that they had something--they had a problem they needed to take care of.

To put the study together, the first thing we did is we looked at all the prior studies that were done to see whether we had better scientific instrumentation now, whether there was a better way to do it, whether we could build a matter mouse trap, talk to all the airlines about where they thought the problem was.

One of the issues was that perhaps it had to do with the older aircraft configuration and the newer generation aircraft. We had a lot of discussion on what aircraft we should test, and then we went on board and we tested 35 flights, I think. And released a report on that.

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Q. Smoking was banned in 1990?
A. Correct.
Q. ASHRAE TC9.3 was formed in 1994?
A. Correct.
Q. Why did they form it in '94 if smoking wasn't a problem?
THE COURT: That's really not the point. The point is you did the study; you found out by taking samples of the air and everything else about contaminants in the planes, right? What was the result of the study?
THE WITNESS: We really didn't see anything different from the studies that were done in the past. The numbers were just about the same.
THE COURT: With or without tobacco smoke?
THE WITNESS: That's correct. They were about the same.
THE COURT: Which studies in the past were you talking about?
THE WITNESS: We looked at The Airliner Study, the GEOMET study. There was one by---
THE COURT: What years?
THE WITNESS: You know, I have a---
MR. COFER: Well, would it assist you

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to see your exhibit?

THE WITNESS: Yes, it would. I laid them all out there because I'm always getting mixed up of what year they were.

MR. COFER: May I show her the exhibit, Your Honor?

THE COURT: Which exhibit are you talking about?

MR. COFER: It's the one that we have been discussing.

THE WITNESS: Oh, you have a small copy.

MR. COFER: Well, let me show it to the Judge and see whether he agrees.

THE WITNESS: Some of the older ones tested for constituents.

THE COURT: I don't understand this.

THE WITNESS: Okay. These are all the studies that were done. These are the congressional hearings. This is where your two-hour smoking ban is and your six-hour. So what had happened was, there's been a flurry of complaints and an increase of complaints, even since the smoking ban. So those are all the major flight attendant studies that were done.

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Q. (By Mr. Cofer) Tell him about congressional hearings post-ban and activities.

MR. COFER: Your Honor, while we're here, just because this issue of surprise that has been raised---

THE COURT: Well, she's talking about a study. She was asked initially, "Did you make a study?" She said, "No. I didn't make a study. I made a survey." Now she's talking about a study. So you're throwing in a curve ball at me because now she's talking about a study and a survey.

MR. COFER: Let me try to clarify it, because if I created the confusion, I apologize.

She's done three things of interest: The '94 survey, and Mr. Rosenblatt said that's not a study; that's a survey. She did a '94 study. That's a separate study. She's been a voting member since the inception of this aviation subcommittee that wasn't even formed until four years after the smoking ban. The express purpose was to try to figure out why they have all these health complaints and problems from flight attendants on planes.

Q. (By Mr. Cofer) Now, let me say one more thing.

Who is John Spangler?

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A. He's from Harvard. He's with the Department of Environmental Health Sciences, I believe.
Q. Did John Spangler conduct a study in 1994 similar to yours?
A. Right at the same time. He was doing one for 20/20.
Q. Was John Spangler an expert witness named by the plaintiffs in this case?
MR. ROSENBLATT: Judge, isn't this going far afield?
A. Yes, he was.
MR. COFER: It's not going far afield because you're claiming surprise.
THE COURT: I don't see how it has anything to do with anything.
MR. COFER: Your Honor, they are claiming surprise. Here's the point I want to make.
THE COURT: They are claiming surprise as far as she is concerned.
MR. COFER: But here's the deposition where they ask her. If you'll let me approach, I can show you where---
THE COURT: Show it to me, not to her.
MR. COFER: That's what I want to do.
MS. LUTHER: Your Honor, just for point

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of clarification, with respect to the survey issue at the beginning, she told Mr. Rosenblatt, in response to his question, he asked her if she had ever done a study comparing pre- and post-ban exposures.

THE COURT: Let's see what it's talking about here.

MR. COFER: That's the survey and then I'll show you the study when you're ready.

THE COURT: I want to see the study. I'm not interested in the survey.

MR. COFER: This is the survey. I'll show you the study if you'll allow me. She was asked about that here in the beginning, but that's the study.

THE COURT: So that's the ATA study that they're not at liberty to publish?

MR. COFER: That's right, Your Honor. There is a little more to the Spangler story that might add something.

THE COURT: I'm not interested in the Spangler story.

MS. ROSENBLATT: Your Honor, unless counsel has more questions---

MR. COFER: Can we excuse

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Dr. Janczewski while we continue this?

THE COURT: Okay. We have no other questions.

(The witness exits the courtroom.)

MS. ROSENBLATT: Your Honor, I think it's clear, you know, dealing with these issues separately, as to this survey which was mischaracterized as a study, it was nothing more than a survey, which is, according to the courts in Florida and throughout the country, this is not scientific evidence. This is speculative. There is no scientific basis for this. This would not be published in any kind of peer-reviewed journal, and she would certainly not be, in our opinion, appropriate for this witness to testify on purely speculative matters that clearly do not meet the Frye test. I mean, if there was a case that's a classic example, she is ready to render opinions about before or after the ban, and whether or not there are other reasons for these health problems, and under Section 702.3 of the Florida evidence code: "Subject of expert testimony, scientific reliability," if anything were not reliable scientifically, it's this witness' explanation of making a lot of phone calls to everyone other than

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the people involved.

There was not even an attempt, not even a minimal attempt to have some type of survey or paper filled out by flight attendants, and in 1994, three years after a nationwide class action is certified, and for whatever it's worth, the publicity throughout the country, including the New York Times, this lady apparently did a certain amount of research, she claims, but was totally unaware that flight attendants have brought a class action for diseases, for exposure in airplanes to secondhand smoke.

I mean, her credibility is really nill. How can anyone be investigating health impacts of contaminants on airplanes and somehow, with whatever investigation and phone calls she did for several months, she never learned of Broin, she never learned of this lawsuit, and she basically just made a bunch of phone calls and put together a lot of information that will clearly prejudice us, has very little probative value, and to read the rule: "An expert's opinion may not be speculation, must be based on reliable, scientific principles. If the expert opinion is not based on reliable, scientific principles, the opinion will not be admitted."

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And it clearly is not based on any scientific principles at all for an individual--she may have the Ph.D; she's done extensive work for the tobacco companies--to come into this courtroom and try to render an opinion that flight attendants complaints and problems have continued and gotten worse.

THE COURT: Let me hear from the defendants.

MR. COFER: Well, here's what I want to say. First of all, with respect to surveys, Frye tests not being scientific, they brought in Cummings. His whole testimony was a survey.

So let's start with that. You know, sauce for the goose, sauce for the gander.

This whole thing started out with "Judge, this is a horrible surprise. It wasn't in the deposition." I showed you where it was in the deposition.

John Spangler conducted a companion test, the same time that Janczewski did. He was their expert. After a deposition, they chose not to call him.

THE COURT: Don't even talk to me about it.

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MR. COFER: My point is it's not a surprise.

THE COURT: Okay.

MR. COFER: Here's the bottom line. Our evidence, our position is secondhand smoke on planes does not cause disease.

THE COURT: I understand your position and I understand everything that you are talking about.

My considered opinion, considering this as a Frye examination, I don't think she is qualified to make the statement she has made based upon her own testimony of how she conducted this alleged, quote, survey, because it's certainly not based on any scientific principles I know about by making phone calls to union leaders.

So, anything that's related to that, I think, is inadmissible.

If she did some studies in the sense of she took tests in an airline environment and did it under whatever conditions she said she did it in a scientific manner, that might be a different story. And whatever the results of those tests show based upon the quality of the air within the airline, that may be something that you may talk about.

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But the other business about whether or not complaints have increased or decreased, certainly she is not in any position --

MR. COFER: Your Honor, may I, Your Honor, try to lay a foundation with the witness?

THE COURT: I have already heard enough.

MR. COFER: But I haven't had an opportunity --

THE COURT: You haven't?

MR. COFER: We started out --

THE COURT: What have we been talking about for the last 20 minutes?

MR. COFER: Frankly, I'm responding to --

THE COURT: I listened to the lady testify as to what she did. It doesn't satisfy me. And I don't think there is any scientific basis for what she has done.

You have something else?

MR. DAVIDSON: Judge, I apologize for my speaking, but Mrs. Rosenblatt is flatly misstating the legal grounds for keeping Dr. Janczewski's testimony regarding her survey out.

I have three cases which stand squarely for

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the proposition that if the foundation is laid, which Mr. Cofer has not yet had the opportunity to do, that these types of surveys are regularly relied on by experts in this area, then the survey's results are admissible.

THE COURT: This kind of survey where you make telephone calls to somebody else based on hearsay is not.

I really don't want to get into it any more.

MR. DAVIDSON: But Judge, I have a case right on point. I have a telephone survey case where someone called up --

THE COURT: I am not satisfied that this is appropriate. Do you understand me?

Let's move on.

MR. COFER: Just so I don't run afoul with the court inadvertently or advertently, I won't mention the survey. Your ruling is the survey doesn't come in.

THE COURT: Whatever she is talking about, the changes and complaints and all of that, is out. She can testify as to whatever studies she did on the airline quality of air on the basis she said she went out and took samples of 38 flights or whatever. If that's what she wants to talk about,

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fine.

MR. COFER: Let me tell you one other area that I think is crucial that I think she is clearly qualified to discuss and I think it's very important and that is this whole issue of ASHRAE TC9.3, when it came into existence, why it came into existence, who is on it and quality control.

Now, part of what she will say is continuing concerns --

THE COURT: I still think we're getting off track of what this case is all about.

MR. COFER: Except, Your Honor, that our position is it doesn't cause it and, second, Your Honor, the second question certified by the Third DCA is if it does cause it, what's the amount, how much.

THE COURT: If it goes to that, I don't have any problem with that. That's what I told you in the beginning.

MR. COFER: So, I won't mention the survey.

MR. ROSENBLATT: Judge, if they bring in M.D.'s who say secondhand smoke doesn't cause disease, that's legitimate.

THE COURT: I know. We have already

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past that point.
MR. ROSENBLATT: Now, I don't know how long, you know --
THE COURT: Let's just do it.
MR. ROSENBLATT: Because I'm sure it will go after five.
MR. COFER: Your Honor --
THE COURT: I don't know. We'll bring her back tomorrow.
MR. COFER: We'll have her stay.
Your Honor, two things. I will, of course, want to make a proffer for the record as to what her testimony --
THE COURT: I don't want you to do it now because I don't want to waste the jury time.
MR. COFER: Okay. And second, so no one will get upset when they say this, anticipating that the Rosenblatts might have this concern since they raised it a few times, I have another time line prepared that doesn't have the post-ban complaints, so let's just look at that one and see if we have a problem.
THE COURT: I don't know what that one is. It looks the same to me.
MR. COFER: But what it does not have

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is the post-ban complaints.
MS. ROSENBLATT: In case you sustained our objection, he had another one made up.
THE COURT: Do you have small copies of those things?
MR. COFER: I do. I'm not sure that's the right one.
Obviously, this is imperative to rebut their argument about fraud.
THE COURT: What's the difference between any of these?
MR. COFER: Look at the far lower right. No post-ban complaints.
THE COURT: What does it purport to show then?
MR. COFER: Remember, this is a fraud case, as plaintiffs want to remind you, that we defrauded the public. It shows the history of cabin air quality, the regulation beginning in 1970, Ralph Nader's letter.
THE COURT: It shows the history of cabin air quality?
MR. COFER: The public issue of cabin air quality.
THE COURT: Wait a minute. Where does

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it say that?
MR. COFER: Well, she will testify to that. I'll say --
THE COURT: Smoking ban on flights under two hours, it shows a whole bunch of --
MR. COFER: It shows 1967, Ralph Nader writes FAA about banning smoking on aircraft.
THE COURT: Wait.
MR. COFER: To the far left. 1970, FAA advance notice of smoking regulations. 1971, the Surgeon General's office conducts a study which concludes, I might add, that smoking is not a problem on planes.
THE COURT: Wait a minute. I don't see -- maybe I have the wrong chart. It doesn't say that.
MR. COFER: Well, I didn't write it all on the chart. She will testify to that.
THE COURT: I see the chart here. I don't need the bigger one.
MR. COFER: I'm telling you what she will testify to.
THE COURT: In 1970, FAA advances a notice of smoking regulation. What does that mean as it relates to whether or not smoking causes

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cancer?
MR. COFER: Whether smoking should be banned on planes. The whole issue is the smoking ban. Why should smoking be banned on planes? Because people were making health complaints suggesting it might cause problems.
THE COURT: Cigar and pipe smoking banned in '84, four eighty-eight, whatever that means, smoking ban on flights -- this is just the ban, okay?
MR. COFER: Right.
THE COURT: So, now what?
MR. COFER: If you look, that will show all the studies where cabin air quality was a public issue from 1971 when the Surgeon General's office --
THE COURT: But it doesn't go to the issue we're talking about.
MR. COFER: Yes, it does, because the third question is did we defraud the public. Listen to what they say. They say they get to put on evidence saying that we are liars, we defrauded the public. We can't tell them we didn't lie, and we can't tell them it was a public issue.
THE COURT: Well, this chart, if it's just a time line of what happened, it doesn't say

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anything about the ultimate conclusion.
MR. COFER: Because it is a demonstrative aid.
THE COURT: They had discussions. Whether it was a two-hour ban or six-hour ban, it went on for years. So what?
MR. COFER: And the witness will testify that it was a public issue, hotly debated in the public forum from 1967 forward.
THE COURT: So?
MR. COFER: That goes to their fraud claim. They say we defrauded the public.
THE COURT: What's she going to say?
MR. COFER: I'm going to say: Dr. Janczewski, you did your study in '94 -- I won't say you did you survey.
THE COURT: Was she involved in all these studies?
MR. COFER: She was involved in the '94. She testified at congressional hearings. And as part of her '94 study, she reviewed all of these prior studies.
THE COURT: Okay, as far as it goes.
MS. ROSENBLATT: We would object to her being a conduit. You didn't permit our experts to

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testify and to go through --
THE COURT: She is going to testify -- look, she is not going to testify about a scientific opinion expressed. If she is going to testify that they had these congressional hearings and one of the issues was whether to ban smoking, so be it. We have already had testimony about that. Get into it any deeper scientifically, she is not qualified.
MS. ROSENBLATT: She is not and not to say what occurred and what the result was because she is not qualified to do that either.
THE COURT: Let's go on. Okay.
MR. COFER: I better advise her of Your Honor's ruling so we don't have a problem.
(The witness entered the courtroom.)
THE COURT: Okay. Let's see if we can get this thing moving. Let's get the jury out here.
THE BAILIFF: Bringing in the jury.
(The jury entered the courtroom and the following proceedings were had:)
THE COURT: Okay. Let's proceed.
BY MR. COFER:
Q. Thank you, Your Honor. Dr. Janczewski, where we left off you had told the jury about your work history, your educational experience, and you

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mentioned indoor air quality. I want you to tell the jury briefly what is involved in study of indoor air quality, when it became an issue in the United States and why.

A. Indoor air quality, called IAQ, started becoming an issue in about the early 1980's. In the 1970's, we were all under that energy crisis and everybody was told to seal up your homes, seal up your office buildings, put insulation and plastic on your windows, more insulation in your house, shut everything down tighter and tighter.

In fact, office buildings that were built after that time don't even have windows that open up anymore. So, what happened was we were trying to conserve energy by sealing off the buildings, trying to use less and less outside air, which isn't necessarily bad, but it certainly is less expensive.

If you take air here in Miami, you got to pull the moisture out of it because it's really humid. In the wintertime when you are up in New England and you bring air in a building, you have to heat it. It gets very, very expensive. You have to cool the air down here, so we tighten up the buildings.

We also have this big advent in the

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seventies of newer plastics, newer fabrics, newer types of carpeting, fabrics for office furniture, bigger copy machines, office equipment, putting on all sorts of pollutants out in the air.

Normally a building is designed or an environment can easily be designed to handle any pollutants you put in there until you start shutting it down. You shut it down and put more pollutants in, then we started seeing in the early eighties this rise in pollutant levels in indoor spaces and we started to see people get sick.

You have heard of sick building syndrome, building-related illness. That's what was happening. It was an indoor air quality problem.

So, what we do in the business is go out and investigate this problem, diagnose a sick building or an area that has a problem and recommend what to do to change the situation.

Q. Are your experiences in addressing sick building syndrome and building-related illness helpful in addressing airborne contaminants in other settings like planes or buses or trains?

A. Absolutely. No two environments are the same. Everything is unique. Whether you go to investigate a home or investigate a plane or it's

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the national zoo or it's a laboratory, everything is different, but you take the same basic skills, same basic equipment, same basic principles on sampling for contaminants, the same principles about threshold limit valves or what levels you can be exposed, and then you can work in any type of unique environment.

Q. Dr. Janczewski, have you personally conducted IAQ, indoor air quality/sick building analysis?

A. Yes.

Q. Approximately how many?

A. Probably hundreds of times.

Q. Tell the jury, if you would, starting from the time the phone rings in your office how you go about assessing an indoor air quality complaint?

A. Well, typically somebody will call and say I can't breathe, there's bad air, we got a problem.

The first thing we like to do is to talk to the occupants that are having a problem. We could either do that from sending out a survey and asking them to keep track of their health complaints or actually sitting down and talking to the workers or the building occupants and find out what they are feeling and when they're feeling it.

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We are looking for trends, you know, do they have a headache, are they nauseous, are they tired, watery eyes, runny nose. Sometimes but not all times we can kind of tease out what might be the problem. For instance, if it is headache and nausea, not always but in most cases it's related to some chemical.

If it's watery eyes, runny nose, well, that's typically your pollen, your cat dander or some other type of allergic response. So, that helps kind of figure out what direction we're going in.

And then we want to know is it on a Monday or is it on a Friday. Office buildings usually shut down over the weekend. The first thing they do Monday morning is turn on the ventilation system. If the ventilation system is contaminated, it blows that contamination right into the building. So, we see that Monday morning illness thing.

Or is it towards the end of the week. Do the symptoms go away when the worker leaves the area. Is it more in the spring than it is in the fall or winter.

So, we're looking for trends. Sometimes these are long-term interviews or surveys and

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sometimes we have got an immediate problem that we can solve right away. Maybe there's been somebody putting pesticides in the night before.

We go through and try to tease out what direction we want to head in next. The next thing we do is look at the ventilating system because over 75 percent of the time it is something wrong with the ventilation stem. Like I said, any ventilation system should be able to handle any kind of contaminant as long as it's designed properly and maintained properly.

But what we typically find is the ventilation system hasn't been designed for the space. Like new commercial office buildings are moving walls around all the time. One day you have an office that has an air vent that's supplying air, and the next day somebody puts a wall up and now one office has two and the other office has none. So, that happens.

Poorly maintained systems, that's a big problem. When a building owner needs to cut budgets, sometimes the first thing they cut is maintenance. So, we see outside where you have dampers that allow the outside air to come in the building, they have fallen down and rusted shut.

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Dampers that are in the ventilation system which are there to fall down in case of fire to keep the smoke from migrating, they fall down and are rusted in place and nobody even knows they're closed shut.

So, we look at the ventilation system because that's usually the culprit.

The very, very last thing we want to do is actually take air samples because air sampling is very expensive. Sometimes it doesn't tell us what we need to know but mostly because of the cost.

Q. Dr. Janczewski, has smoking been allowed in any of the buildings you have investigated?

A. In the past, no. I have done a lot of federal government work, so there isn't smoking in federal government buildings for a long time.

More recently we have gotten into it because we are doing a lot of work with restaurants and casinos, and that's actually what we're in there for is to help them design better smoking areas to accommodate smokers and nonsmokers. But most of the work we have done has been in no smoking buildings.

Q. You said in, I think, 70 or 75 percent of the time, the problem is with the ventilation system. To what extent does smoking contribute to indoor air quality problems?

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A. In my experience and in everything that I have read, everybody in the industry agrees that smoking is associated probably with less than two percent of the problems that you see in indoor air quality, because the hundreds of buildings we have looked at, there's a typical example, we get called in and there isn't even any smoking in there.

Q. Now, Dr. Janczewski, we have heard a lot of testimony in this case about recirculated air. If you would, briefly tell the jury what is recirculated air and is it bad?

A. That's a fallacy. Everybody thinks recirculated air is bad. That's where you bring air into a building or into a space and you keep reusing it over and over and over again. Everybody thinks oh, well, recirculated, that must be bad. Actually, to the contrary, recirculated air sometimes can be the best air.

When we need the cleanest air around, we depend on recirculated air. Think about the space shuttle. Where do you think those guys get their air from? They have the same air being used over and over again.

How about a submarine? They have no way to get outside air. They are recirculating their air.

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Commercial office buildings recirculate a lot of their air. We certainly recirculate a tremendous amount of air in our houses, but we all live and breathe fine.

In the cleanest environments where we absolutely want sterile air like, say, an operating room or how about an operating room where you are doing deep bone surgery, if you get an infection in your skin, you can treat it with antibiotics. But if you get an infection in bone, you have a lot of trouble because we can't treat it with an antibiotic.

So, you want to make sure, if you are having deep bone surgery, that you are in a sterile room. They supply the air to orthopedic surgery rooms through recirculated air through high-efficiency particulate air filters, and those filters are designed to remove all of the infectious agents so you have got a sterile environment.

They use the same filters in the space shuttle, use the same filters when they make computer chips, microchips, you know, you see those people in those clean suits, white space suits making computer chips, those are clean rooms and those depend on recirculated air.

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We use recirculated air where we want the best control of it, but so it's not necessarily bad. The time that air gets bad is when ventilation systems are improperly designed and improperly maintained. You can have either all fresh air or all recirculated air and it's just fine as long as you design and maintain the system right.

Q. Dr. Janczewski, we have heard testimony in this case comparing the exposures to secondhand smoke that flight attendants get on planes with the exposures to secondhand smoke that spouses get in homes.

Are homes different than planes?

A. Absolutely. Every environment is unique. It's very dangerous to take data that you have collected in one environment and just apply it to another environment because everything is different.

Q. Tell the jury how planes are different than other enclosed places.

A. Think about some of the common sense stuff. Think about the occupant density where we have a lot of people crammed into a small aluminum tube. We don't usually see that except maybe a movie theater or church. Not an unusual environment but, nevertheless, not something we're in all day every

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day.

We have got a lot of people coming on board, liberating all of their contamination from their clothes to their biological contamination, all the stuff that we all insist on bringing on board because we don't want to check it in, and all of that is contamination. You have the food being served.

You have got outside issues that you don't have on the ground. You have cosmic radiation that is bombarding the plane. You have higher level of ozone than you see on the ground. You have no humidity. At 30,000 feet, there's no moisture in the air like there is on the ground.

But at the same time, there's no pollution like we have on the ground. You don't have the pollution off the cars and you don't have the pollen and you don't have all sorts of things that we normally get in the springtime.

You have got, like I said, indoor contaminants like cat dander. Anybody who owns a cat, if you sit on an aircraft seat, that will not come out of that fabric. Three years later we can test it and there's still cat dander there. But at the same time, you have one of the most

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sophisticatedly designed and maintained ventilation systems.

The amount of air that's changing over in an aircraft compared to our house is phenomenal. You got maybe in your house you get a complete change in the air once every three hours and, you know, you have got ten times higher when you are in an aircraft. So, you have got more air moving through there. You have got it moving through those same filters that we use in operating suites, those HEPA filters.

So, you have got a better designed system. You certainly got a better maintained system. And how many of us have changed that filter on our house air conditioning system in a long time? I haven't done it in ages. It doesn't clean anything really. Just kind of keeps all the squirrels and pigeons out of your air conditioning systems.

You have HEPA filters on planes. All you have are those little filters in your house.

They regularly maintain the aircraft ventilation system. We don't maintain our ventilation system at home like that.

It's better designed and designed for that space in an aircraft. Our home isn't necessarily

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designed very well for what we're living in.
So, there's a big difference and it's very dangerous to compare the two.
Q. Dr. Janczewski, you mentioned earlier you had conducted a measurement study on airplanes. When was it conducted?
A. 1994.
Q. And who retained your firm to conduct it?
A. The Air Transport Association.
Q. Tell the jury what the Air Transport Association is.
A. They're the trade association that represents all the major airlines: United, TWA, Continental, Delta. They're located in Washington, D.C. and they -- I think they're the only organization that represents the airlines.
Q. What did your study involve? What did you do?
A. They had called us in to respond to an increased number of complaints on board aircraft cabins about the air quality, and the airlines were concerned something is going on in their aircraft and they don't understand what it is. It seems to be getting worse. There seemed to be more complaints. So, they asked us whether or not we

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could go on board and actually run some samples and tests and see what we could find.

One of the things we did was we needed to go back and look at the old studies that were done too because they had discussed the old studies with us as well, said could you take a look at what was done and we did and thought what could we do better, do we have better scientific instruments we can use now, can we get better data, can we do something a lot better --

MR. ROSENBLATT: Objection, Judge. She is going way beyond the question.

THE COURT: I don't think so. Overruled.

BY MR. COFER:

Q. You may proceed, Doctor.

A. You asked me what we did. So, we designed the study, got the equipment, went on board 35 flights, I believe, and tested the air and then came back and wrote a report for them.

Q. Let me stop you right there. You say you reviewed prior studies?

A. Right.

Q. You conducted sampling?

A. Right.

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Q. Did you review any congressional hearings or other information?
A. Yes. Anything we could find on the subject, congressional hearings, we talked to the airlines themselves, they were all there.
Q. Let me ask you this: The samples you took, the physical samples you took, did you take them on both domestic and international flights?
A. No, just domestic.
Q. When your study was done in 1994, was smoking allowed on domestic flights?
A. No.
Q. You took measurements on how many flights?
A. 35, I believe.
Q. And what type of aircraft?
A. We did two newer generation and two older generation aircraft. The older generation -- I always mix this up every time somebody asks me because we are doing other airline studies right now so I get confused.
Q. You had some that were a hundred percent fresh air and some that were circulated air?
A. Circulated air, right.
Q. Have you prepared a chart which would help you explain to the jury what you did and what you

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measured?
A. What we took measurements of, yes.
Q. Would that assist the jury in understanding what you measured?
A. I think so.
Q. Does it fairly and accurately depict what you measured and what you did?
A. Yes.
MR. COFER: Your Honor?
THE COURT: Okay.
MR. COFER: With Your Honor's permission, could the doctor step down?
THE COURT: Certainly.
BY MR. COFER:
Q. These are the things we sample for which really aren't much different than what we have done in other studies with the exception, of course, we weren't studying environmental tobacco smoke, so there were a couple things we left out. But mostly we tried to stay pretty similar to other studies.
We looked at total suspended particulates. You know when you see a ray of sunlight coming through the window and there's all these particles floating in the air? That's what we're looking at, particles. We had big, huge particles. We had

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little, tiny particles that you can't see.

There's a range of particles in there. The big ones you breathe in, they get caught in your nose hairs and they never get to your lungs.

The little tiny, teeny, tiny ones you breathe in, they hit your lungs and breathe them back out again. But there's a range right in the middle that you breathe in and they stay in your lungs, and those are known as respirable particulate.

So, a lot of times you will see studies that will do RSP's instead of TSP's. We looked at the TSP's because we are interested in those bigger particles as well, those things that get in your eyes and make your eyes water, so we had total suspended particulates.

Q. Carbon dioxide, is it a good indicator of ventilation rates?

A. Yes, it is.

Q. Is ventilation important?

A. Ventilation is everything.

Q. Why?

A. Without ventilation, we can't remove pollutants. Without ventilation, we're not comfortable. We don't have the right temperature.

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We don't have the right humidity. We have a basic understanding, in indoor air quality, what carbon dioxide levels are comfortable for people. What are good levels that indicate to us that we're getting enough ventilation, we're getting enough air exchange rates.

So, carbon dioxide doesn't become a health threat. You know, we all breathe in oxygen and then breathe out carbon dioxide and the plants take in the carbon dioxide and put out oxygen. So, it's not something that's going to kill you unless it gets to really high levels like when you breathe in a plastic bag and that's all you are breathing. But we don't see dangerous levels in these environments, but we test for it to give us an idea of the ventilation rates.

Q. What are volatile organic compounds and why do you test for those?

A. Those are types of chemicals we're looking for. We're looking for those chemicals that are volatile. They have a lot of pressure. They want to evaporate in the air. Nail polish, nail polish remover, gasoline, those things that the minute you pour it on the ground, you are going to smell it because it's got a high vapor pressure, it's very

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volatile and wants to get in the air as opposed to if you break a thermometer, and the mercury is on the ground, you know how it won't evaporate? That doesn't have a high vapor pressure.

So, we're concerned about those things we are getting in the air because that's what you breathe.

Q. How do volatile organic compounds get in air cabins in the first place? What are the sources?

A. I talked earlier about how in every indoor environment you get contaminants. You get dry cleaning fluid coming off your clothes, the carpeting, the fabrics, people bringing things on board, the food, the alcohol, everything on board is putting off chemicals. Every environment we're in, you are getting exposed to these things.

Q. Now, microbials, what are they and what did you find?

A. Microbials are your biological organisms, the bacteria, the fungus, the mold, the cat dander, the pollen, those things that make your eyes water and nose run.

Q. Why did you test temperature, relative humidity and noise?

A. These are more comfort factors. They're not

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contaminants, what we call environmental factors. We knew the ranges that we should be in or that the airline manufacturers, the aircraft manufacturers specified for the aircraft, so we wanted to see if it was in that range and whether or not it was a comfortable environment.

Q. You can return to the witness stand.

The question is, what were the conclusions of your study?

A. We didn't find anything on that list -- CO2, carbon dioxide levels were a little high. They weren't a health threat and they weren't unexpected because when you put a lot of people in a room, like this room, your CO2 levels go up. But everything else was well below any recommended threshold limit.

Remember those limits that we feel are dangerous? Everything was well below that. There was nothing that we could really tie to health effects or the complaints that we were getting, and it was all -- we had the same numbers that everybody else did. Even though we had more sophisticated equipment this time, lo and behold, we got the same numbers. We're seeing the same thing. There really isn't a lot of anything there.

Q. How did the measurements taken on planes

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that had a hundred percent fresh air compare with the measurement taken on planes with recirculated air?

Were there significant differences?

A. There were no significant differences. Nothing that would make you believe that aircraft configuration really made a difference.

There were things we expected. For instance, humidity was a little higher in the recirculated. So, it's a little more comfortable, not as dry. But at the same time, the CO2 was a little higher because you are recirculating 50 percent of the air in there. But there really wasn't much of a difference between the two.

Q. How were the results of your study reported?

A. We put it out in a document, in a book, a spiral bound book that ATA released, and it's available through the ATA if anybody wants it.

Q. Did you also testify before Congress about the results of your study?

A. Shortly after that I testified at the congressional hearings.

Q. Now, you told us earlier that in addition to taking your own samples that you just described for the jury, that you reviewed the past studies on

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cabin air quality.
What did those studies sample?
A. The same things except for a lot of them, the older studies were looking at --
MR. ROSENBLATT: Excuse me, Your Honor. Based on your previous ruling, we object.
MR. COFER: Let's approach sidebar.
(Counsel and the court reporter approached the bench, and the following discussion was held outside the hearing of the jury:)
MS. ROSENBLATT: Could we state our objection and then you can respond? We would object because what she is doing now is basically being used as a conduit to explain her version of what occurred in old studies which she did, fine, but now she is talking about what other people did, what they concluded and there's no mechanism, no exception for the hearsay rule.
Basically she is using and she is talking about other studies and in this case that's inadmissible. Other studies can be used for cross examination, but she cannot simply start talking about other studies and what they found.
MR. COFER: I would agree with

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Mrs. Rosenblatt if I asked her questions from precise specific studies. I'm asking her her opinion comparing the results of the studies, and what she will say is they are generally the same.

Clearly an expert can rely on hearsay or any sort of information to form his or her opinion if the person is qualified. What the person cannot do under Florida law, unlike federal law, is admit inadmissible evidence through an expert.

In other words, they can't quote from and use as a conduit the hearsay. I'm not doing that. What I'm going to ask is you reviewed the past studies, what did they measure, how did the results compare, and she will say they are essentially the same.

MS. ROSENBLATT: She has already said that.

THE COURT: No, this was a different study. Which studies is she going to be talking about?

MR. COFER: She is comparing her '94 study with the prior studies. What I want to ask her is how did the results of her study in '94 compare generally with the prior studies. All the studies preceded hers.

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MR. ROSENBLATT: ETS?

MR. COFER: Yes, 1971, all the studies. But let me tell you what I'm not doing.

THE COURT: The difference being, of course, the methodology that was used, collecting the samples, the scientific operation. She even talked about we have better methods of collection and all of that sort of thing and detection.

MR. COFER: I can lay that foundation.

MS. ROSENBLATT: I think he can bring in someone to testify as to particular studies, people that did it, or he can try to introduce the studies.

THE COURT: She can testify that essentially they're the same result, but that's about as far as she can go.

MS. ROSENBLATT: Not what the other studies found or anything.

THE COURT: No.

MR. COFER: I'm just going to say how did the prior studies -- how did the results of your study compare.

THE COURT: She has already said that, but as it relates to these past studies.

MS. ROSENBLATT: Without getting into

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them.

(The following proceedings were held within the hearing of the jury:)

BY MR. COFER:

Q. Where I think we were, Dr. Janczewski, is you just told the jury about your 1994 study that you conducted. You told us that you had also reviewed the prior studies in terms of preparation for your 1994 study you conducted.

What did those prior studies measure?

A. A lot of the same things, and then a lot of the prior studies were looking at smoking --

MR. ROSENBLATT: Excuse me, Your Honor. That's exactly contrary to the sidebar.

THE COURT: Sustain the objection. I think the question was different at the sidebar.

MR. COFER: I didn't intend for it to be, so I'll ask the ultimate question.

BY MR. COFER:

Q. Your 1994 study, were you able to compare the findings of your study to the prior studies?

A. Yes.

Q. And what were the results generally?

A. Generally the same. The numbers were the same. We were just missing RSP's, which I talked

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about earlier, and nicotine. So, we couldn't compare that, but everything else was comparable.

Q. On your studies, were what you measured below these PEL's and these TLV's, these levels, these ceilings that you have discussed?

A. Correct.

Q. The prior studies, what they measured, were they also below these PEL's and TLV's that you discussed?

A. Yes.

Q. Now, the prior studies, not your studies, they were conducted when smoking was permitted on planes, right?

A. Correct.

MR. ROSENBLATT: Objection, Your Honor.

MR. COFER: I haven't even asked the question.

THE COURT: I don't know where he's going, but that question is all right. Overruled.

BY MR. COFER:

Q. Here's my question: Did those prior studies take measurements in smoking sections on planes and measurements in nonsmoking sections on planes?

A. Yes.

MS. ROSENBLATT: We would object, Your

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Honor, because I think your ruling was very limited in terms of the scope.

THE COURT: That's within the limitation. Overruled.

BY MR. COFER:

Q. And my question on that is how did the measurements taken in the smoking sections on planes compare with the measurements taken in the nonsmoking sections on planes?

MS. ROSENBLATT: We would have the same objection, Your Honor. That's getting into the studies themselves, which I don't think is appropriate.

THE COURT: I think we can talk about it in very general terms, whether they did or did not compare.

THE WITNESS: In general, the numbers --

THE COURT: Without specifics.

THE WITNESS: -- were higher in the smoking section than the nonsmoking section, but both smoking and nonsmoking were way below any threshold value.

BY MR. COFER:

Q. Again, let's stay general. Did they look at

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measurements in nonsmoking sections of planes where smoking was permitted?

A. Right.

Q. So, you have planes where smoking was permitted, the nonsmoking sections.

THE COURT: Now we're getting deeper and deeper into it.

MR. COFER: Let me come over and explain to you where I'm going. It's a general question, and I think it is well within Your Honor's ruling.

THE COURT: Do you want to talk about it?

MR. COFER: Either that or I'd like to ask the question. Why don't I ask the question and then we can talk about it if necessary?

THE COURT: I don't want to do that. Based upon what we have already discussed, if you are going outside the parameters of that, then we better discuss it.

MR. COFER: I don't think we are, but you know --

THE COURT: Let's find out.

(Counsel and the court reporter approached the bench, and the following

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discussion was held outside the hearing of the jury:)

MR. COFER: I am trying to be very careful not to -- here's what I'm asking: Did the studies compare measurements on planes that didn't allow smoking at all with measurements on planes that allowed smoking in the nonsmoking section, and she will say yes. And I'll say, how do those measurements compare, and she will say, essentially the same.

Let me tell you why this is germane and why this is important. Plaintiffs have represented that regardless of where you sit on a plane, whether it is the smoking section or nonsmoking section, that you were forced to breathe all this secondhand smoke. That's not what the studies say. She clearly has the expertise. She has reviewed it.

In fact, in his opening statement, Mr. Rosenblatt said, and I think it is the -- I can get the exact quote -- flight attendants were on planes where you couldn't open windows, there was no fresh air and there was just recirculation.

Testimony again -- and you will notice today I asked Mrs. Laxinetta if a flight attendant worked at his own zone or coach, did you have to go --

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essentially what this testimony will do is lay the foundation for exposures that were very different in the smoking sections of planes from the nonsmoking section.

It's an issue in the case, and she is qualified, and I'm just going to ask her that bottom line without getting into all the studies.

THE COURT: Well, see, the problem is you are again comparing one to the other and, basically, that's not what's supposed to be done because supposing they were different?

She can testify as to her results.

MR. COFER: But see, the --

THE COURT: The other testimony is already in evidence.

MR. COFER: Except it's just from plaintiffs' perspective. What plaintiff said was if you look at the dose, it's the same regardless of where they were. That's not what the studies say. And let me tell you how I'm hamstrung.

THE COURT: How is she going to say it was the same?

MR. COFER: I'm going to say: Did you look at the studies where they took the measurements?

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She will say sure.
And did they look at the same things?
Sure.
Did you compare the measurements that were taken on planes where no smoking was permitted at all?
Yes.
Where measurements were taken in the nonsmoking sections of planes where smoking was permitted?
And she will say yes.
How did those compare?
THE COURT: No, let's not get into comparisons. Why don't you just tell what she did and later you can, if you want to bring in somebody else on the other ones, they can testify about that because what you are doing is you are getting in the results of the other tests.
MS. ROSENBLATT: Exactly.
MR. COFER: Let me say that's what experts can do.
MS. ROSENBLATT: No.
THE COURT: Not really.
MR. COFER: Experts certainly can rely on information outside the court, and I can grab the

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Rules of Evidence.

THE COURT: What you are actually doing is you are comparing this study with that study and comparing what the results are.

MS. ROSENBLATT: And bolstering the testimony through references to other studies either through comparison or otherwise, which flatly violates the rule and there is a recent case where it is error to permit that.

THE COURT: I think we have gone far enough.

MR. COFER: One more thing before we finish that. The way it works is I cannot bolster my witness's testimony by using --

THE COURT: Basically you're doing it.

MR. COFER: No, I'm not. What I can do is ask her her opinion and then they can choose on cross examination to bring in the study. Remember that's what they did in the plaintiffs' case.

THE COURT: I understand that, but you can't bolster her report.

MR. COFER: I'm not. Here's what you --

THE COURT: What do you think the difference is?

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MR. COFER: Because I'm not saying is your study hunky-dory, did you do a great study. What I want to do is this is back when smoking was on planes. They took measurements in smoking sections. They took measurements in nonsmoking sections. How do the measurements in nonsmoking sections compare with measurements on planes where smoking wasn't even allowed.

MS. ROSENBLATT: But she didn't do those studies.

MR. COFER: But she is an expert. She reviewed them. 90 point -- come back here.

90.704 --

THE COURT: What I'm trying to do is trying to avoid getting into the content of the other studies. That's the point.

MR. COFER: I'm not going to get into it.

THE COURT: If you are saying I found it would be 1.2 and how did that compare with the other one that found 1.2, it is comparable, but if you say it is comparable, what difference does it make --

MR. COFER: As plaintiffs always said in their case, I'm just getting into it a little.

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THE COURT: Not for the truth of the matter.
MR. COFER: But it is clearly relevant.
MS. ROSENBLATT: And the judge always sustained it.
THE COURT: Not always.
MR. COFER: Here is where I'm hamstrung.
THE COURT: How far are you going?
MR. COFER: One question and I'll stop.
MS. ROSENBLATT: He's gone very far.
MR. COFER: One question and I'll stop.
MR. ROSENBLATT: Wait. While we're up here, how much longer are you going to be, about?
THE COURT: We'll cross tomorrow.
MR. COFER: I'll stop after this question. I want to finish.
MR. HARDY: The reason I came up here is I wanted to suggest that, in view of the fact that we're saving cross until tomorrow, I don't think we ought to have to conclude the direct of this witness because we're going to make a proffer in the morning and offer proof based upon the prior court's ruling.
MR. COFER: You know what? This is a

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great ending point. I'll ask her this question.

MR. HARDY: We just want to make a proffer before the cross starts. That's all.

MR. COFER: I'll ask her this question and get the answer and we'll quit for the day.

(The following proceedings were held within the hearing of the jury:)

BY MR. COFER:

Q. All right. Based on the review of these studies, tell me how the measurements taken in the nonsmoking sections of smoking planes compared with the measurements taken on planes that didn't allow smoking at all?

A. They were the same.

MR. COFER: That's it. Stop for the day. It's a convenient stopping point. I'm not through with you yet, but I am for the day.

THE COURT: All right. Rather than get into something a little more inclusive, I guess we can stop today and pick it up tomorrow morning. Unless we have other matters to take up prior to the beginning of the session, we'll meet at nine with the jury.

MR. COFER: Your Honor, there was a proffer we wanted to make first.

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THE COURT: How long is that going to take?

MR. COFER: Probably not more than 15 minutes.

THE COURT: 9:30. You be here at 9:30. You be here at nine. Okay.

(The jury exited the courtroom.)

THE COURT: Over the evening you must not discuss this matter with anybody including the lawyers, and I don't think it would be appropriate to review any prior testimony of anything of that nature. Just forget about it until tomorrow and then you will come back and do whatever it is you have to do.

We'll be in recess until tomorrow at nine o'clock.

MR. MOSS: Your Honor, can we raise an issue?

THE COURT: All right. Do you want to go outside, please?

(The witness exited the courtroom.)

MR. HARDY: I just wanted to inquire about the Friday investiture issue because I didn't know what you found out.

THE COURT: What I found out is I

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didn't find a place to have court, so I think we'll have to be off Friday.

MR. ROSENBLATT: We're going to have to be off Friday? That's all right with me.

MR. COFER: I'd like you to tell the jury it is the plaintiffs' fault.

MS. ROSENBLATT: We have all those file cabinets.

MR. MOSS: There's simply no courtroom?

THE COURT: None that are available that I know of. The only thing I could do at this point, if we do find one, is -- I have an appointment in the afternoon. We could have a morning session, if we can get by with that, if I can find a place to hold it.

MS. ROSENBLATT: I would vote for Friday off since I have to finish all those memos by Monday anyway.

MR. HARDY: If we don't have the afternoon, then I vote we take Friday off too. We don't want to end up in a situation where we end up with part of a witness.

MR. MOSS: Our preference is we have all day but, obviously, if Your Honor has an appointment in the afternoon --

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THE COURT: Well, I can't really do it all day.

MR. MOSS: I'm not asking for that.

THE COURT: Okay.

MR. COFER: Thank you.

(Court was adjourned at 4:50 p.m.)

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